

1904-007 Chancery Causes: William Pennington vs. Charles E. Mallett &
Lee Co.

Folder 1 of 3

[Ely, Maness, Tyra, Eldridge, Witt, Thomas, Barnett, Delp,
Parsons, McLane, Bales, Gibson, Kelly, Pocket Co],
Cowan, McClung, Rhea, Cowan McClung & Co], Evans,
Burger

- Deed

CA Contract Dispute
T-Property

** Honor that on May 3rd 1895, he assigned to Cowan, McHenry & Co. enough of said debt to secure them in the payment of \$1974.46 on the day due them any further sum which he might become within four years thereafter due them; that on June 7th 1895 said Cowan, McHenry & Co. did furnish to your complainant ~~the~~ money, under Merchandise or amounting to the sum of \$43.50 \$241.66 thereof due within 60 days from June 7th 1895 and the residue due from 7th 1895 to 7th 1895; and that only \$182.22 on Dec. 21st 1895 has been paid to said Cowan, McHenry & Co.*

To The Hon. W. T. Miller, Judge of the Circuit Court for Lee County:—

Humbly complaining, your orator, Wm. Pennington, a citizen of Lee County, Virginia, would respectfully represent unto your Honor, That on the tenth day of October, 1891, he sold, conveyed and delivered to one Chas. E. Mallett, two certain tracts or parcels of land lying and being in Lee County, in the Pocket Country,—one of the tracts containing 824 acres at the price of \$15.00 per acre, and the other containing 170 acres at the price of \$25.00 per acre, or the sum of \$16610.00 for both tracts; that by the terms of sale, which is expressed in the deed made, said Mallett paid down to your orator on the purchase price of said land the sum of \$500.00, and was to pay on Jan. 1st., 1892 \$500.00 more, and the residue with interest from the 10th. day of Oct., 1891 (the interest, payable semi-annually, beginning with April, 10th., 1892) payable on or before Oct., 10th., 1896, that said Mallett or his assignee paid to your orator the \$500.00 to be paid on Jan. 1st., 1892, and also the first two years interest.

Your orator will farther show unto your honor, that said Mallett by deed conveyed said lands to the Pocket Company, a corporation organized under the laws of Kentucky; that \$15510 of the purchase price of said lands with interest thereon from the 10th. day of Oct. 1893 is due and unpaid to your orator; that when your orator conveyed said lands to said Mallett, on the face of the deed of conveyance he reserved a lien upon the lands so conveyed to secure the unpaid purchase money and interest to accrue thereon. A copy of which deed is here filed, marked "Deed" and prayed to be taken as a part of this bill of complaint. *Your orator will further show unto your* *

Your orator will further show unto your honor, that the said Chas. E. Mallett, is a non-resident of this State; that the said Pocket Company is a corporation created by the laws of ^{the} State of Kentucky, but has no officer or agent within this State or County, on whom process may be served.

The premises considered, your orator is advised that he has a

and he here asserts the only lien

vendors lien upon said lands described in said copy of said deed; that his lien is capable only of being enforced in a court of Equity; his prayer therefore is that your honor take cognizance of his said cause of complaint, that he be declared to have a vendor's lien upon said lands for the amount of the unpaid purchase money due thereon with its interest; that said lands, or enough thereof to satisfy said lien, and the costs of this suit be directed to be sold by your honor; that said Chas. E. Mallett and the said Pocket Company be made parties defendants to this bill of complaint, and that they be required to answer the same, but they need not do so on oath, that being expressly waived, that an order of publication be duly made against said defendants as the law requires in such cases. And that on a final hearing of the cause all general, and special relief be granted your orator that the nature of his cause may require to have justice metted out to him. May Process issue etc. And your orator will ever pray etc.

E. H. Pennington, Atty for Pl.

J. S. Cronan, C. J. McLung, Mathew McLung, R. M. Allen and Jacob E. Thomas doing business under the style and name of Cronan, McLung & Co.

Virginia.

Lee Countv.to-wit:-

This day Jas.D.Pennington.personally appeared before me.a notary public in and for the County and State aforesaid.and made oath that Chas.E.Mallett and the Pocket Comoany against whom Wm.Pennington is about to bring suit in the circuit court for Lee Countv.on the chancery side thereof.are non-residents of this Commonwealth.

Given under my hand this the.26 day of June.1896

..... N.P.

March 16th 1897

(1)

Plffs Costs
Clerk 9.99
Printer 10.00
Atty 15.00
Estimated 8.00
\$39.99

J^m Dunnington

3 In Chancery

Chas. T. Mallett ^{clerk}

1897 1st Feb rules & pa not
Executed O. P.
" 1st Feb rules & pa not
last week in set
D. P. Conf. & set for
hearing.

1897 1st Feb rules & pa not
Executed O. P.
" 2nd rules O. P. Complete
& Cause set for hearing

To the Honorable H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia:

Humbly complaining, your orator, William Pennington, a citizen of said county, respectfully represents that on the 30th day of October, 1902, he filed in the said court, or rather in the clerk's office thereof, his original bill in chancery, in the words and figures following, to-wit:

"To the Honorable H.A.W.Skeen, Judge of the circuit court for Lee County, Virginia:

Humbly complaining, your orator, William Pennington, a citizen of the said county, respectfully represents that by deed dated the 10th day of October, 1891, he sold, and, together with his wife, conveyed to one Chas.E.Mallett two certain tracts or boundaries of land, lying and being in Lee County, Virginia, one containing one hundred and seventy (170) acres and the other containing eight hundred and twenty-four (824) acres, for which the said Chas.E.Mallett promised and agreed to pay your orator at the rate of twenty-five dollars per acre for the first mentioned, or one hundred and seventy acre, tract, and fifteen dollars per acre for the eight hundred and twenty-four acre tract, making the entire price for both of said tracts sixteen thousand six hundred and ten dollars (\$16610.00), of which sum five hundred dollars (\$500.00) was paid in cash at the date of the delivery of the said deed, a like sum of five hundred dollars (\$500.00) was to become due and payable on the 1st day of January, 1892, and the residue, or fifteen thousand six hundred and ten dollars (\$15610.00) was to become due and payable on the 10th day of October, 1896, but it was stipulated that the interest on the said last payment should be paid semi-annually beginning with April 10th, 1892, and your orator reserved in the face of the said deed a lien on the land thereby conveyed to secure the payment of the purchase money therefor; and the said deed was duly recorded in the clerk's office of the county court for Lee County, in Deed Book No.27, page 448, on the 2nd day of September, 1891, all of which will more fully and at large appear from an inspection of an attested copy of the said deed which is herewith filed as a part hereof, marked "Exhibit No.1."

Your orator further represents that the said Chas.E.Mallett by deed dated the 17th day of December, 1891, conveyed the said two tracts of land, along with other lands hereinafter named, to the Pocket Company, a corporation of the State of Kentucky, subject, however, to all the existing liens thereon for unpaid purchase money and all other liens, but this deed has never been recorded in Lee County, a copy thereof, however, made from the original, is herewith filed as a part hereof, marked "Exhibit No.2."

Your orator further represents that the said Chas.E.Mallett, or the said Pocket Company, his vendee, for him, paid to your orator the said sum of five hundred dollars which became due and payable on the 1st day of January, 1892, and also the interest on the said last deferred payment of fifteen thousand six hundred and ten dollars up to the 10th day of October, 1893, but neither the said Chas.E.Mallett nor the said Pocket Company, ever made any other or further payments on the purchase price of the said two tracts of land, but wholly failed and refused to further carry out the said contract.

Your orator further represents that shortly after the 10th day of October, 1896, when, according to the terms set forth in the said deed, the whole of the residue of the purchase price of the said two tracts of land became due and payable, he instituted his suit in equity in the circuit court for Lee County Virginia, against the said Chas. E. Mallett and others, the object of which was to enforce the vendor's lien so reserved as aforesaid in the deed whereby he conveyed the same to the said Mallett; that such proceedings were had in the said cause that on the 4th day of March, 1897, a decree was rendered therein by the said court, whereby E. W. Pennington, who was thereby appointed a special commissioner for the purpose, was directed to make sale of the said two tracts of land or so much thereof as might be necessary to discharge and satisfy the said purchase money lien of your orator for the said sum of fifteen thousand six hundred and ten dollars, with legal interest thereon from the said 10th day of October, 1893, and the costs of the said suit, by public auction, at the front door of the court-house of the said county, on a court day, on certain terms and after certain advertisement in the said decree fully set forth; and that on the 24th day of May, 1897, the said E. W. Pennington, special commissioner as aforesaid, filed in the said cause his report of sale, whereby he reported to the court that he did, on the 17th day of May, 1897, pursuant to the said decree for sale, after due advertisement, and at the time and place and upon the terms mentioned therein, make sale of the whole of the said two tracts of land, at which sale Chas. D. Russell and Isaiah Pennington became the purchasers thereof at the price of three thousand dollars (\$3000.00), of which sum one hundred and nine dollars (\$109.00) was applied to the payment of the costs of the said suit and the commissions of said sale, and for the residue of which or the sum of two thousand eight hundred and ninety-one dollars (\$2891.00), the said Chas. E. Mallett is entitled as of the said 17th day of May, 1897, to a credit on the sum agreed to be paid by him to your orator for the said two tracts of land. Your orator filed herewith as a part hereof, marked "Exhibit No. 3." a transcript of the record and proceedings in the said cause, to which reference is here made for the facts herein stated with regard thereto, and any other facts shown thereby which are pertinent to this proceeding.

Your orator further represents that on the said 17th day of May, 1897, the amount then due on the said purchase price of the said two tracts of land, including all unpaid interest to that date, was seventeen thousand nine hundred and eighty-four dollars and thirty-six cents (\$17984.36); and that, after deducting the said net price for which the said lands were sold, or two thousand eight hundred and ninety-one dollars (\$2891.00), therefrom, there was left due to your orator on that day the sum of fifteen thousand and ninety-three dollars and thirty-six cents (\$15093.36): And your orator alleges that the said Chas. E. Mallett has not, nor has any other person for him, ever paid the said last mentioned sum, or any part thereof, or of the interest thereon, to your orator, or otherwise whatsoever, but the same and all the legal interest which has accumulated thereon since the said 17th day of May, 1897, is now justly due and owing to your orator, and his assignees, by the said Chas. E. Mallett.

Your orator further represents that on the _____ day of _____ 1902, by a written assignment, he transferred and assigned to his son, A. N. Pennington, five thousand dollars of the said debt against the said Chas. E. Mallett, and its interest.

Your orator further represents that by deed dated the 26th day of August, 1891, one John L. Pennington, together with his wife, sold and conveyed to the said Chas. E. Mallett a number of

tracts of land, adjoining each other and constituting one entire boundary, also situated in said County of Lee, and in that section of country called the "Pocket", and containing in the aggregate about one thousand one hundred and sixty-five (1165) acres, which deed was duly recorded in said Lee county court clerk's office, in Deed Book No. 27, page 217, on the 5th day of April, 1892; and for a full statement of the said contract between the said parties and a complete description of the lands conveyed thereby, reference is hereby made to an attested copy of the said deed which is herewith filed as a part hereof, marked "Exhibit No.4."

Your orator further represents that the said Chas.E.Mallett, by the deed hereinbefore referred to and filed herewith as "Exhibit No.2", conveyed the said eleven hundred and sixty-five (1165) acre tract of land, along with the two tracts hereinbefore referred to, to the said Pocket Company, but, as before stated, the said deed from the said Mallett and wife to the said Pocket Company, has never been recorded in Lee County.

Your orator alleges that the said Chas.E.Mallett is not a resident of the State of Virginia.

Your orator is advised that under the statutes and laws of the State of Virginia the said eleven hundred and sixty-five acre (1165) acre tract of land is still the property of the said Chas.E.Mallett in so far as his creditors are concerned, and he has the right to attach the same as such and subject it to the payment of his said debt; and such is the object of this bill.

By a further inspection of the aforesaid deed from the said John L.Pennington and wife to the said Chas.E.Mallett, it will be observed that the said Pennington reserved therein a lien for the sum of eight thousand eight hundred and twenty dollars (\$8820.00); and your orator alleges that the said John L.Pennington, being the owner of the said lien, against the said eleven hundred and sixty-five acre tract of land, on the 29th day of May, 1893, entered into a contract in writing, with one M.C.Parsons, whereby he exchanged the said lien to the said Parsons for a certain four hundred and twelve (412) acre tract of land, called the Wm.A.Parsons tract, as will more fully appear from an inspection of an attested copy of the said contract, made from Lee County Deed Book No.29, page 593, which is herewith filed as a part hereof, marked "Exhibit No.5."

Your orator will further represent that the said M.C.Parsons thus being the owner of the said vendor's lien for eight thousand eight hundred and twenty dollars (\$8820.00) against the said eleven hundred and sixty-five acre tract of land, on the 6th day of October, 1894, entered into a contract in writing with one Henry Nicoll, whereby he sold to the said Henry Nicoll a certain farm known as "Elk Knob", and whereby the said Nicoll, in part payment for the said "Elk Knob" farm, agreed to procure from the said Pocket Company a conveyance to the said Parsons of the said eleven hundred and sixty-five (1165) acre tract of land: and your orator alleges that, pursuant to the said contract, the said Henry Nicoll did procure from the said Pocket Company a conveyance to the said M.C.Parsons of the said eleven hundred and sixty-five (1165) acre tract of land, but on account of the extreme illness of the said Parsons at the time and his death shortly afterwards, the said Nicoll did not deliver the said deed to the said Parsons, in his lifetime, but did deliver it to his administrators after his death. This deed, however, has never been recorded, and your orator has no knowledge of its whereabouts at the present time, and hence he cannot file a copy of it.

Your orator alleges, however, that the administrators and heirs of the said M.C.Parsons accepted the said deed from the said Nicoll, and that thereupon the legal title to the said land became vested in the said M.C.Parsons, or his heirs, who

also held the said vendor's lien, and, as he is advised, the said two titles merged. In fact it was the agreement between the said Pocket Company and the said Parsons that when the legal title to the said land was conveyed to the said Parsons by said Company, the said lien of eight thousand eight hundred and twenty-dollars should be extinguished.

Your orator alleges that the said M.C. Parsons, immediately after the date of the said contract with the said Nicoll, took possession of the said eleven hundred and sixty-five acre tract of land and began to cut and remove valuable timber therefrom, and at the date of his death had cut and removed therefrom large quantities of polar, cucumber and ash timber, and after his death his administrators continued to cut and remove from the said land large quantities of valuable poplar, cucumber and ash timber, until there was taken therefrom in all timber to the value of about four thousand dollars (\$4000.00) or more by the said Parsons in his lifetime and his administrators after his death.

Your orator further alleges that shortly after the death of the said M.C. Parsons, which occurred about March, 1895, the said John L. Pennington filed his bill in chancery in the said circuit court of Lee county whereby he alleged a parol exchange of the said four hundred and twelve (412) acre, or Wm. A. Parsons tract of land which he had purchased from the said M.C. Parsons, back to the said M.C. Parsons for the said eleven hundred and sixty-five acre tract of land aforesaid, making the heirs of the said M.C. Parsons parties defendant thereto, and praying the specific performance of the said parol contract of exchange; and that such proceedings were thereupon had (and other causes heard therewith) that at the November Term, 1896, of the said court, the court decreed the specific execution of the said contract set up by the said Pennington, and directed the said John L. Pennington to convey to the heirs of the said M.C. Parsons the four hundred and twelve (412) acre, of Wm. A. Parsons, tract of land, and also directed R. L. Pennington, who was thereby appointed a special commissioner for the purpose, to make conveyance on the part of the heirs of the said Parsons (a number of whom were infants) of the said eleven hundred and sixty-five acre tract of land to the said John L. Pennington, retaining a lien therein for the sum of fifteen hundred dollars, which was the sum ascertained to be due to said M.C. Parsons by the said John L. Pennington on the difference in price between the said two tracts of land, all of which will more fully appear from an inspection of a certified transcript of the record and proceedings of the said cause which is herewith filed as a part hereof, marked &Exhibit No. 6."

Your orator further represents that the said R. L. Pennington Special Commissioner, pursuant to the said decree, did, on the 15th day of June, 1897, make and execute to the said John L. Pennington a deed, bearing said date, whereby he conveyed to the said John L. Pennington the said eleven hundred and sixty-five acre tract of land, reserving on the face of the said deed a lien for the said sum of fifteen hundred dollars (\$1500.00), with interest thereon from the 1st day of June, 1896, and four hundred dollars thereof to become due and payable on the 1st day of November, 1897, a like sum on the 5th day of November, 1898, a like sum on the 5th day of November, 1899, and three hundred dollars (\$300.00), the residue thereof, to become due and payable on the 5th day of November, 1900. The said deed however, has never been recorded, but is still on file in the papers of said cause, and a copy of the same is made therein.

Your orator alleges also that the said John L. Pennington, pursuant to the requirements of the said decree of November, 1896, did, by deed dated the 22nd day of February, 1902, and recorded in Lee County Deed Book No. 38, page 319, convey to the heirs of the said M.C. Parsons the said four hundred and twelve acre tract of land, as will fully appear from an in-

spection of the said deed, a certified copy of which is herewith filed as a part hereof, marked "Exhibit No.7."

Your orator further represents that under the proceedings of a certain suit in chancery entitled, "GREER MACHINERY CO. vs. J. D. PENNINGTON et al.", lately and now pending in the circuit court for Lee county, which was and is a lien creditors' suit against the said John L. Pennington and others, the said Eleven hundred and sixty-five acre tract of land was sold by R.L. Pennington, Special Commissioner, in parcels, for the purpose of satisfying the vendor's lien of fifteen hundred dollars (\$1500.00) and various other liens, by judgment, deed of trust, mortgage &c., and sold too to pay a lien which was not due at the time of sale, which fact is immaterial at this time however as your orator supposes.

At the sale made by the said R.L. Pennington, special commissioner, one parcel of said land was purchased by one A.H. Ely who fully complied with his purchase, and by deed dated the 14th day of March, 1900, and recorded in Lee County Deed Book No. 36, page 7, the same was conveyed to him by the said R.L. Pennington, special commissioner, as will fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No.8." A mistake of some kind having been made in said deed, however, the said R.L. Pennington, special commissioner, on the 8th day of March, 1901, made, executed and delivered to the said A.H. Ely another deed conveying to him the land purchased by him, and this last mentioned deed is recorded in Lee County Deed Book No.37, page 250, all which will appear from an inspection of a copy of the said deed which is herewith filed as part hereof, marked "Exhibit No.9."

One L.M. Zion became the purchaser of another parcel of the said eleven hundred and sixty-five acre tract of land at the sale made by the said R.L. Pennington, Special Commissioner, and the same was conveyed to him by Deed dated the 2nd day of February, 1901, and recorded in Lee County Deed Book No.37, page 149, as will fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No.10".

One W.L. Eldridge finally became the purchaser of another parcel of the said eleven hundred and sixty-five acre tract of land at the sale made by the said R.L. Pennington, Special Commissioner, and the same was conveyed to him by the said commissioner by deed dated the 5th day of March, 1901, and recorded in Lee County Deed Book No.37, page 236, as will fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No.11."

The said R.L. Pennington, Special Commissioner as aforesaid, sold the residue of the said eleven hundred and sixty-five acre tract of land to one B.N. Barnett, as shown by the proceedings of the said cause, but your orator finds no deed to him on the records.

By deed dated the 29th day of January, 1901, and recorded in Lee County Deed Book No.37, page 133, on the 30th day of January, 1901, the said A.H. Ely, together with his wife, conveyed 225 acres of the land purchased by him as aforesaid from the said R.L. Pennington, special Commissioner, to one H.A.L. Maness, reserving therein a vendor's lien for unpaid purchase money, as will more fully appear from an inspection of the said deed, an attested copy of which is herewith filed as a part hereof, marked "Exhibit No.12". Your orator is not advised as to whether the purchase money to secure which the lien was retained in the said deed has been paid, but the said Maness is in the possession of the said land, and still claims the same as his own.

By deed dated the 29th day of July, 1901, recorded in Lee County Deed Book No. 37, page 135, on the 30th day of January, 1901, the said A.H. Ely, together with his wife, sold and conveyed 223 acres, or the residue of the land so purchased by him as aforesaid, to one Chas. H. Maness, reserving therein a lien for unpaid purchase money, all which will more fully appear from an inspection of the said deed, an attested copy of which is herewith filed as a part hereof, marked "Exhibit No. 13". Your orator is not advised as to whether the purchase money to secure which the said lien was reserved in the said last mentioned deed has been paid, but the said Chas. H. Maness is in the possession of the said land, and claims that he owns the same.

By deed dated the 8th day of February, 1902, and recorded in Lee County Deed Book No. 39, page 58, on the 2nd day of June, 1902, the said L.M. Zion, together with his wife, sold and conveyed to one Rebecca Tyra, with special warranty, the whole of the land purchased as aforesaid by him from the said R.L. Pennington, Special Commissioner as aforesaid, as will more fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No. 14". The said Rebecca Tyra claims to be the owner of the said land, and is now in the possession thereof.

By deed dated the 30th day of July, 1901, and recorded in Lee County Deed Book No. 38, page 22, on Oct. 12, 1901, the said Wm. Eldridge, together with his wife, sold and conveyed to one A.J. Witt 58 acres of the 252 acres purchased by him as aforesaid from the said R.L. Pennington, Special Commissioner as aforesaid, as will fully appear from an inspection of the said deed, an attested copy of which is herewith filed as a part hereof, marked "Exhibit No. 15"., and the said Witt is now in the possession of the said land claiming it as his own.

By deed dated the 30th day of July, 1901, and recorded in Lee County Deed Book No. 38, page 23 on the 12th day of October, 1901, the said Wm. Eldridge, together with his wife, sold and conveyed to Almyra Thomas another parcel of the said tract purchased by him as aforesaid from the said R.L. Pennington, special commissioner as aforesaid, as will more fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No. 16". The said Thomas is in the possession of the said land, claiming it as her own.

The said Wm. L. Eldridge is still in the possession of the residue of the said two hundred and fifty-two acre tract of land so purchased by him as aforesaid from the said R.L. Pennington, special commissioner as aforesaid, claiming it as his own.

By deed dated the 1st day of October, 1901, and recorded in Lee County Deed Book No. 38, page 470, on March 18th, 1902, the said B.N. Barnett, together with his wife, sold and conveyed to one J. N. Kelly a portion of the land purchased by him as aforesaid from the said R.L. Pennington, special commissioner, as aforesaid, as will more fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No. 17"., and the said J.N. Kelly is still in the possession of the said land, claiming it as his own.

By deed dated the 26th day of December, 1901, and recorded in Lee County Deed Book No. 38, page 190, on December 31st, 1901, the said B.N. Barnett, together with his wife, sold and conveyed to W.T. Bales, Trustee, among other things, another parcel of the land purchased by him as aforesaid, from the said R.L. Pennington, special commissioner as aforesaid, in trust, to secure to the firm of John R. Gibson & Sons a debt of \$359.00. The said firm of John R. Gibson & Sons is composed of John R. Gibson, James O. Gibson, Chas. B. Gibson, and O.C. Gibson. Your orator is not advised as to whether the said debt has been paid.

A copy of the said deed is filed herewith as a part hereof, marked "Exhibit No.18".

By deed dated the 18th day of February, 1902, and recorded in Lee County Deed Book No.39, page 119 on June 30th, 1902, the said B.N.Barnett, together with his wife, conveyed another parcel of the land purchased by him as aforesaid from the said R. L.Pennington, special commissioner as aforesaid, to one Samuel L.McLane, as will fully appear from an inspection of a certified copy of the same which is herewith filed as a part hereof, marked "Exhibit No.19"., and the said McLane is still in possession of the said parcel, claiming it as his own.

By deed dated the 15th day of May, 1902, and recorded in Lee County Deed Book No. 39, page 115, on the 27th day of June, 1902, the said B.N.Barnett, together with his wife, sold and conveyed another parcel of the land purchased by him as aforesaid from the said R.L.Pennington, special commissioner as aforesaid, to one Nervy R.Parsons, as will more fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No.20", and the said Parsons is still in the possession of the said parcel, claiming it as his own.

By deed dated the 27th day of June, 1902, and recorded in Lee County Deed Book No.39, page 116, on the same day, the said B.N.Barnett, together with his wife, sold and conveyed to one Simpson Thomas the residue of the tract of land purchased by him as aforesaid from the said R.L.Pennington, special commissioner as aforesaid, as will more fully appear from an inspection of a copy of the said deed, which is herewith filed as a part hereof, marked "Exhibit No.21."

Your orator has been informed that the said Simpson Thomas sold a small portion of this last mentioned tract to one Joseph Delp, but he finds no such deed on record. The said Thomas is in the possession of the remainder thereof, claiming it as his own.

Your orator alleges therefore that the present claimants of the said eleven hundred and sixty-five acre tract of land are H.A.L.Maness, Chas.H.Maness, Rebecca Tyra, W.L.Eldridge, A.J.Witt, Almyra Thomas, J.N.Kelly, W.T.Bales, Trustee, John R.Gibson, James O.Gibson, Chas.B.Gibson and O.C.Gibson, partners in trade under the style and firm name of John R.Gibson & Sons, Samuel L.McLane, Nervy R.Parsons, Simpson Thomas, A.H.Ely, B.N.Barnett, and Joseph Delp.

Your orator alleges that there are no other liens against the said Chas.E.Mallett.

Your orator further alleges that the said purchasers from the said R.L.Pennington, special commissioner, and their said vendees have cut and removed from the said tracts of land large quantities of valuable timber, the aggregate value of which, was possibly five thousand dollars, but your orator is unable to state how much timber was removed by any one of the said parties.

The prayer therefore of your orator is that the said Chas. E.Mallett, A.H.Ely, H.A.L.Maness, Chas.H.Maness, Rebecca Tyra, Wm.L.Eldridge, A.J.Witt, Almyra Thomas, B.N.Barnett, Simpson Thomas, Joseph Delp, Nervy R.Parsons, Samuel L.McLane, W.T.Bales, Trustee, John R. Gibson, James O.Gibson, Chas.B.Gibson, Olin C.Gibson and J.N.Kelly be made parties defendant to this bill; that the court's subpoena in chancery issue against the said defendants; that order of publication be duly made, posted and published against the said Chas.E.Mallett; that each of the said defendants be required to answer the said bill fully but they need not do so under oath, as that is waived; that the said purchasers from the said R.L.Pennington and their vendees be especially required to answer and disclose how much timber they have each cut and removed from the said land, or parts of it, and the value thereof; that an attachment be is-

sued and levied upon the said eleven hundred and sixty-five acre tract of land; and that the said tract of land, so attached, be sold to satisfy your orator's said debt; and that full general relief be granted to your orator in the premises.

L. T. Hyatt,
Geo P. Cridlin, P.O.

Virginia, Lee County, to-wit:

This day William Pennington appeared before me, L.T.Hyatt, a commissioner in chancery for the circuit court of Lee County, Virginia, in said county, and made oath that the statements contained in the foregoing bill, so far as made from his own knowledge, are true, and so far as made from knowledge or information derived from other sources, he believes them to be true. Given under my hand this the 29th day of October, 1902.

L.T.Hyatt,
Commissioner in Chancery."

Your orator further represents that on the same day, to-wit the 30th day of October, 1902, a subpoena in chancery was issued against the defendants mentioned in the said bill, by the clerk of the said court, with an order of attachment endorsed thereon; and that on the same day, to-wit, the 30th day of October, 1902, W.J.Mileham, sheriff of said county of Lee, endorsed thereon a levy in the following words and figures, to-wit:

"Levied on the following real estate of the defendant Charles E.Mallett, to-wit: All those certain tracts or parcels of land lying in Lee County, Virginia, in the Pocket Country, which were conveyed by John L.Pennington and wife to said Charles E. Mallett by deed dated the 26th day of August, 1891, and recorded in Lee County Deed Book 27 page 217, to which deed reference is here made for a full and complete description of the said land, the said tracts containing in the aggregate about 1165 acres.

This the 30th day of October, 1902.

W. J. Mileham,
Sheriff.L.C.

Your orator further represents that all of the said defendants to the said bill except the said Chas.E.Mallett were duly served with a copy of the said subpoena, or an alias subpoena, having endorsed thereon the said order of attachment, by the sheriff of the said Lee County, one certain of his deputies.

Your orator further represents that the said Chas.E.Mallett was duly proceeded against by order of publication duly made, posted and published as required by law, but on account of the fact that the said order of publication, that is the certificate of publication, was not filed in the clerk's office in due time

the said cause was not placed upon the docket for hearing at the March term, 1903, of the said court, but the said certificate has now been filed, and the cause is ready for hearing.

Your orator alleges that the defendants H.A.L. Maness, Chas. H. Maness, Rebecca Tyre, Wm. L. Eldridge, A. J. Witt, Almyra Thomas, B. N. Barnett, Simpson Thomas, Joseph Delp, Nancy R. Parsons, J. N. Kelly and Sam. L. McLane, at the first January rules, 1903, of the said court, filed in the clerk's office thereof, their joint and separate demurrer to the said bill.

Your orator further represents that the said land so attached by him is valuable mostly for its timber, the coal right having been sold off by John L. Pennington before his sale to said Chas. E. Mallett; and your orator alleges that the said H.A.L. Maness, Chas. H. Maness, Rebecca Tyra, Wm. L. Eldridge, A. J. Witt, Almyra Thomas, B. N. Barnett, Simpson Thomas, Joseph Delp, Nervy R. Parsons, J. N. Kelly and Samuel L. McLane, since the service of the said attachment as aforesaid, have been cutting and removing from the said land valuable timber, and are now cutting and removing therefrom the timber standing thereon, and have cut and yarded thereon large quantities of timber which they will soon remove unless restrained from so doing. And your orator is advised that he has a lien on the said timber standing on the said land at the date of the issuance and levy of the said attachment, and that he has a right to call upon the court to restrain and inhibit the said defendants, their agents and employees, from cutting and removing the said timber from the said land so that the same may be subjected to the payment of his debt. And respondent alleges that the said defendants are people of small means, some of them, as he is informed, being totally insolvent, so that he can not be compensated in damages for the removal of the said timber; and it would be well nigh impossible, from the very nature of the case, to ascertain the amount of such damage.

One of the objects therefore of this bill is to restrain and inhibit the said defendants, H. A. L. Maness, Chas. H. Maness,

Rebecca Tyra, Wm. L. Eldridge, A. J. Witt, Almyra Thomas, B. M. Barnett, Simpson Thomas, Joseph Delp, Nervy R. Parsons, J. N. Kelly and Samuel L. McLane, their agents, employees, shoppers, sawyers, teamsters, loggers, and waggoners, from severing any other timber from the said land, and from removing therefrom any of the timber which they have already severed since the said 30th day of October, 1902, and from converting the same into lumber and removing the said lumber from the said land.

Your orator further represents that the said Charles E. Mallett is the owner of another tract of land in Lee County, Virginia, about which your orator did not know at the time of the filing of his original bill, to-wit: a tract of land containing sixty-two and one half acres, lying in the "Pocket" in said County of Lee, on or near the top of Little Black Mountain, and adjoining the Kentucky line, and being the same tract of land which the said Mallett purchased from one E. M. Pennington. The sale by the said E. M. Pennington to said Mallett was made on the 1st day of January, 1892, and on that day the said Mallett paid to the said E. M. Pennington the sum of two hundred dollars (\$200.00) on the purchase price therefor, and executed his note for the sum of five hundred and forty-seven dollars (\$547.00), the residue of the said purchase price, payable two years after said date, with interest from said date, and your orator alleges that the said Mallett paid one year's interest on said note.

Your orator further represents that at the second February rules, 1903, of the said court, the said E. M. Pennington filed therein his bill, the object of which is to enforce his lien on the said land for the amount of the said note of five hundred and forty-seven dollars (\$547.00), with interest thereon from the 1st day of January, 1893, until payment and costs; and at the March term, 1903, of the said court a decree was rendered in said cause appointing Geo. P. Cridlin as special commissioner to make sale of enough to the said land to pay the said note and the interest

thereon, and the costs of said suit.

The further object, therefore, of this bill is to enjoin the said Geo.P.Cridlin, Commissioner, and the said E.M.Pennington from selling the said land until the further order of the court, and to attach the said land and have the same sold to pay your orator's debt against the said Chas.E.Mallett.

The prayer therefore of your orator is that the said Geo.P. Cridlin, Commissioner, E.M.Pennington, Chas.E.Mallett, the Pocket Company, a corporation, and the defendants to the said original bill of your orator be made parties to this amended bill; that they each be required to answer the same, but not under oath as that is waived; that the said H. A. L. Maness, Chas.H.Maness, Rebecca Tyra, Wm.L.Eldridge, A.J.Witt, Almyra Thomas, B.N.Barnett Simpson Thomas, Joseph Delp, J. N. Kelly, Samuel L.McLane, and their agents and employees, be enjoined and inhibited from cutting and removing from the said 1165 acre tract of land any of the timber standing thereon, and be enjoined and restrained from removing therefrom any of the timber which they have cut since the levy of his attachment thereon; that the said Geo.P.Cridlin and E.M.Pennington be enjoined from selling the said $62\frac{1}{2}$ acre tract of land last mentioned until the further order of the court; that the said $62\frac{1}{2}$ acre tract of land be attached and subjected to the payment of your orator's said debt if any surplus should be left after the payment of the said E.M.Pennington's first lien for \$547.00 with interest thereon from the 1st day of January, 1893; if found necessary, that a receiver be appointed to take charge of and market the timber which has been cut from the said 1165 acre tract since the same was levied on, and still remains upon the said land, or unsold; and that full general relief be granted. May spa.issue &c.

L. P. Hyatt, P. q.

Virginia, Lee County, to-wit:

This day William Pennington, plaintiff in the foregoing bill, appeared before me, Alfred Ryan a Notary Public, for Lee County, Virginia, in my said county, and made oath that the statements contained in the said bill, so far as made from his own knowledge, are true, and so far as made from information derived from other sources, he believes them to be true. *My Commission Expires Dec 14/1905*
Given under my hand this the 30th day of March, 1903.

Alfred Ryan N.P.

Insurrection refused.
This April 14, 1909.

H. A. W. S. Kew
Judge

C. W. Pennington

vs. { In Chy.

Chas E. Mallett et al.

Amended Bill.

L. T. HYATT,
ATTORNEY AT LAW,
JONESVILLE, VIRGINIA.

To the Honorable H. A. W. Skeen, Judge of the circuit court for Lee County, Virginia:

Humbly complaining, your orator, William Pennington, a citizen of the said county, respectfully represents that by deed dated the 10th day of October, 1891, he sold, and, together with his wife, conveyed to one Chas.E.Mallett two certain tracts or boundaries of land, lying and being in Lee County, Virginia, one containing one hundred and seventy (170) acres and the other containing eight hundred and twenty-four (824) acres, for which the said Chas.E.Mallett promised and agreed to pay your orator~~at~~ the rate of twenty-five dollars per acre for the first mentioned, or one hundred and seventy acre, tract, and fifteen dollars per acre for the eight hundred and twenty-four acre tract, making the entire price for both of said tracts sixteen thousand six hundred and ten dollars (\$16610.00), of which sum five hundred dollars (\$500.00) was paid in cash at the date of the delivery of the said deed, a like sum of five hundred dollars (\$500.00) was to become due and payable on the 1st day of January, 1892, and the residue, or fifteen thousand six hundred and ten dollars (\$15610.00) was to become due and payable on the 10th day of October, 1896, but it was stipulated that the interest on the said last payment should be paid semi-annually beginning with April 10th, 1892, and your orator reserved in the face of the said deed a lien on the land thereby conveyed to secure the payment of the purchase money therefor; and the said deed was duly recorded in the clerk's office of the county court for Lee County, in Deed Book No.27, page 448, on the 2nd day of September, 1891, all of which will more fully and at large appear from an inspection of an attested copy of the said deed which is herewith filed as a part hereof, marked "Exhibit No.1."

Your orator further represents that the said Chas.E.Mallett by deed dated the 17th day of December, 1891, conveyed the said

two tracts of land, along with other lands hereinafter named, to the Pocket Company, a corporation of the State of Kentucky, subject, however, to all the existing liens thereon for unpaid purchase money and all other liens, but this deed has never been recorded in Lee County, a copy thereof, however, made from the original, is herewith filed as a part hereof, marked "Exhibit No.2."

Your orator further represents that the said Chas.E.Mallett, or the said Pocket Company, his vendee, for him, paid to your orator the said sum of five hundred dollars which became due and payable on the 1st day of January, 1892, and also the interest on the said last deferred payment of fifteen thousand six hundred and ten dollars up to the 10th day of October, 1893, but neither the said Chas.E.Mallett nor the said Pocket Company, ever made any other or further payments on the purchase price of the said two tracts of land, but wholly failed and refused to further carry out the said contract.

Your orator further represents that shortly after the 10th day of October, 1896, when, according to the terms set forth in the said deed, the whole of the residue of the purchase price of the said two tracts of land became due and payable, he instituted his suit in equity in the circuit court for Lee County, Virginia, against the said Chas.E.Mallett and others, the object of which was to enforce the vendor's lien so reserved as aforesaid in the deed whereby he conveyed the same to the said Mallett; that such proceedings were had in the said cause that on the 4th day of March, 1897, a decree was rendered therein by the said court, whereby E.W.Pennington, who was thereby appointed a special commissioner for the purpose, was directed to make sale of the said two tracts of land or so much thereof as might be found necessary to discharge and satisfy the said purchase money lien of your orator for

the said sum of fifteen thousand six hundred and ten dollars, with legal interest thereon from the said 10th day of October, 1893, and the costs of the said suit, by public auction, at the front door of the court-house of the said county, on a court day, on certain terms and after certain advertisement in the said decree fully set forth; and that on the 24th day of May, 1897, the said E.W.Pennington, special commissioner as aforesaid, filed in the said cause his report of sale, whereby he reported to the court that he did, on the 17th day of May, 1897, pursuant to the said decree for sale, after due advertisement, and at the time and place and upon the terms mentioned therein, make sale of the whole of the said two tracts of land, at which sale Chas.D.Russell and Isaiah Pennington became the purchasers thereof at the price of three thousand dollars (\$3000.00), of which sum one hundred and nine dollars (\$109.00) was applied to the payment of the costs of the said suit and the commissions of said sale, and for the residue of which or the sum of two thousand eight hundred and ninety-one dollars (\$2891.00), the said Chas.E.Mallett is entitled as of the said 17th day of May, 1897, to a credit on the sum agreed to be paid by him to your orator for the said two tracts of land. Your orator files herewith as a part hereof, marked "Exhibit No.3." a transcript of the record and proceedings in the said cause, to which reference is here made for the facts herein stated with regard thereto, and any other facts shown thereby which are pertinent to this proceeding.

Your orator further represents that on the said 17th day of May, 1897, the amount then due on the said purchase price of the said two tracts of land, including all unpaid interest to that date, was seventeen thousand nine hundred and eighty-four dollars and thirty-six cents (\$17984.36); and that, after deducting the said net price for which the said lands were sold, or two thousand eight hundred and ninety-one dollars (~~\$2891.00~~), therefrom,

(\$2891.00) therefrom, there was left due to your orator on that day the sum of fifteen thousand and ninety-three dollars and thirty-six cents (\$15093.36): And your orator alleges that the said Chas.E.Mallett has not, nor has any other person for him, ever paid the said last mentioned sum, ~~xxxxxxx~~ or any part thereof, or of the interest thereon, to your orator, or otherwise whatsoever, but the same and all legal interest which has accumulated thereon since the said 17th day of May, 1897, is now justly due and owing to your orator, and his assignees, by the said Chas.E.Mallett.

Your orator further represents that on the _____ day of _____, 1902, by a written assignment, he transferred and assigned to his son, A.N.Pennington, five thousand dollars of the said debt against the said Chas.E.Mallett, ^{and its interest}

Your orator further represents that by deed dated the 26th day of August, 1891, one John L.Penning^{son}, together with his wife, sold and conveyed to the said Chas.E.Mallett a number of tracts of land, adjoining each other and constituting one entire boundary, also situated in said County of Lee, and in that section of country called the "Pocket", and containing in the aggregate about one thousand one hundred and sixty-five (1165) acres, which deed was duly recorded in said Lee county court clerk's office, in Deed Book No.27, page 217, on the 5th day of April, 1892; and for a full statement of the said contract between the said parties and a complete description of the lands conveyed thereby, reference is hereby made to an attested copy of the said deed which is herewith filed as a part hereof, marked "Exhibit No.4."

Your orator further represents that the said Chas.E.Mallett, by the deed hereinbefore referred to and filed herewith as "Exhibit No.2", conveyed this eleven hundred and sixty-five (1165) acre tract of land, along with the two tracts hereinbefore referred to, to the said Pocket Company, but, as before

stated, the said deed from the said Mallett and wife to the said Pocket Company, has never been recorded in Lee County.

Your orator alleges that the said Chas.E.Mallett is not a resident of the State of Virginia.

Your orator is advised that under the statutes and laws of the State of Virginia the said eleven hundred and sixty-five acre (1165) acre tract of land is still the property of the said Chas.E.Mallett, *in so far as his creditors are concerned*, and he has the right to attach the same as such and subject it to the payment of his said debt; and such is the object of this bill.

By a further inspection of the aforesaid deed from the said John L.Pennington and wife to the said Chas.E.Mallett, it will be observed that the said Pennington reserved therein a lien for the sum of eight thousand eight hundred and twenty dollars (\$8820.00); and your orator alleges that the said John L.Pennington, being the owner of the said lien, against the said eleven hundred and sixty-five acre tract of land, on the 28th day of ~~October~~ *May*, 1893, entered into a contract in writing, with one M.C.Parsons, whereby he exchanged the said lien to the said Parsons for a certain four hundred and twelve (412) acre tract of land, called the Wm.A.Parsons tract, as will more fully appear from an inspection of an attested copy of the said contract, made from Lee County Deed Book No.29, page 593, which is herewith filed as a part hereof, marked "Exhibit No.5".

Your orator will further represent that the said M.C.Parsons, thus being the owner of the said vendor's lien for eight thousand eight hundred and twenty dollars (\$8820.00) against the said eleven hundred and sixty-five acre tract of land, on the 6th day of October, 1894, entered into a contract in writing with one Henry Nicoll, whereby he sold to the said Nicoll a certain farm known as "Elk Knob", and whereby the said Nicoll, in part payment for the said "Elk Knob" farm, agreed to procure from the said Pocket Company a conveyance to the said Par-

sons of the said eleven hundred and sixty-five (1165) acre tract of land: and your orator alleges that, pursuant to the said contract, the said Henry Nicoll did procure from the said Pocket Company a conveyance to the said M.C.Parsons of the said eleven hundred and sixty-five (1165) acre tract of land, but on account of the extreme illness of the said Parsons at the time and his death shortly afterwards, the said Nicoll did not deliver the said deed to the said Parsons, in his lifetime, but did deliver it to his administrators after his death. This deed, however, has never been recorded, and your orator has no knowledge of its whereabouts at the present time, and hence he cannot file a copy of it.

Your orator alleges, however, that the administrators and heirs of the said M.C.Parsons accepted the said deed from the said Nicoll, and that thereupon the legal title to the said land became vested in the said M.C.Parsons, or his heirs, who also held the said vendor's lien, and, as he is advised, the said two titles merged. In fact it was the agreement between the said Pocket Company and the said Parsons that when the legal title to the said land was conveyed to the said Parsons *by said Company* the said lien of eight thousand eight hundred and twenty-dollars should be extinguished.

Your orator alleges that the said M.C.Parsons, immediately after the date of the said contract with the said Nicoll, took possession of the said eleven hundred and sixty-five acre tract of land and began to cut and remove valuable timber therefrom, and at the date of his death had cut and removed therefrom large quantities of poplar, cucumber and ash timber, and after his death his administrators continued to cut and remove from the said land large quantities of valuable poplar, cucumber and ash timber, until there was taken therefrom in all timber to the value of about four thousand dollars (\$4000.00) or more by the said Parsons in his lifetime and his administrators after

his death.

Your orator further alleges that shortly after the death of the said M.C.Parsons, which occurred about March, 1895, the said John L.Pennington filed his bill in chancery in the said circuit court of Lee county whereby he alleged a parol exchange of the said four hundred and twelve (412) acre , or Wm.A.Parsons tract of land which he has purchased from the said M.C.Parsons, back to the said M.C.Parsons for the said eleven hundred and sixty-five acre tract of land aforesaid, making the heirs of the said M.C.Parsons parties defendant thereto, and praying the specific performance of the said parol contract of exchange; and that such proceedings were thereupon had (and other causes heard there with) that at the November Term, 1896, of the said court, the court decreed the specific execution of the said contract set up by said Pennington, and directed the said John L.Pennington to convey to the heirs of the said M.C.Parsons the four hundred and twelve (412) acre, of Wm.A.Parsons, tract of land, and also directed R.L.Pennington, who was thereby appointed a special commissioner for the purpose, to make conveyance on the part of the heirs of the said Parsons (a number of whom were infants) of the said eleven hundred and sixty-five acre tract of land to the said John L.Pennington, retaining a lien therein for the sum of fifteen hundred dollars, which was the sum ascertained to be due the said M.C.Parsons by the said John L.Pennington on the difference in price between the said two tracts of land, all of which more fully appear from an inspection of a certified transcript of the record and proceedings of the said cause which is herewith filed as a part hereof, marked "Exhibit No.6."

Your orator further represents that the said R.L.Pennington, Special Commissioner, pursuant to the said decree, did, on the 15th day of June, 1897, make and execute to the said John L.Pennington a deed, bearing said date, whereby he convey-

ed to the said John L. Pennington the said eleven hundred and sixty-five acre tract of land, reserving on the face of the said deed a lien for the said sum of fifteen hundred dollars (\$1500.00), with interest thereon from the 1st day of June, 1896, and four hundred dollars thereof to become due and payable on the 1st day of November, 1897, a like sum on the 5th day of November, 1898, a like sum on the 5th day of November, 1899, and three hundred dollars (\$300.00), the residue thereof, to become due and payable on the 5th day of November, 1900.

The said deed, however, has never been recorded, but is still on file in the papers of said cause, and a copy of the same is made therein.

Your orator alleges also that the said John L. Pennington, pursuant to the requirements of the said decree of November, 1896, did, by deed dated the 22nd day of February, 1902, and recorded in Lee County Deed Book No. 38, page 319, convey to the heirs of the said M. C. Parsons the said four hundred and twelve acre tract of land, as will fully appear from an inspection of the said deed, a certified copy of which is herewith filed as a part hereof, marked "Exhibit No. 7".

Your orator further represents that under the proceedings of a certain suit in chancery entitled, "GREER MACHINERY CO. vs. J. D. PENNINGTON et al.", lately and now pending in the circuit court for Lee county, which was and is a lien creditors' suit against the said John L. Pennington and others, the said eleven hundred and sixty-five acre tract of land was sold by R. L. Pennington, Special Commissioner, in parcels, for the purpose of satisfying the vendor's lien of fifteen hundred dollars (\$1500.00) and various other liens, by judgment, deed of trust, mortgage &c., and sold too to pay a lien which was not due at the time of sale, which fact is immaterial at this time however as your orator supposes.

At the sale made by the said R. L. Pennington, special com-

missioner, one parcel of said land was purchased by one A.H. Ely, who fully complied with his purchase, and by deed dated the 14th day of March, 1900, and recorded in Lee County Deed Book No.36, page 7, the same was conveyed to him by the said R'L'Pennington, special commissioner, as will fully appear from an inspection of ~~a copy~~ of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No'8". A mistake of some kind having been made in the said deed, however, the said R.L.Pennington, special commissioner, on the 8th day of March, 1901, made executed and delivered to the said A.H. Ely another deed conveying to him the land purchased by him, and this last mentioned deed is recorded in Lee County Deed Book No.37, page 250, all which will appear from an inspection of a copy of the said deed which is herewith filed as part hereof, marked "Exhibit No.9".

One L.M.Zion became the purchaser of another parcel of the said eleven hundred and sixty-five acre tract of land at the sale made by the said R.L.Pennington, Special Commissioner, and the same was conveyed to him by Deed dated the 2nd day of February, 1901, and recorded in Lee County Deed Book No.37, page 149, as will fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No.10".

One W.L.Eldridge finally became the purchaser of another parcel of the said eleven hundred and sixty-five acre tract of land at the sale made by the said R.L.Pennington, Special Commissioner, and the same was conveyed to him by the said commissioner by deed dated the 5th day of March, 1901, and recorded in Lee County Deed Book No.37, page 236, as will fully appear from an inspection of the said deed, a copy of which is herewith filed as a ^aprt hereof, marked "Exhibit No.II".

The said R.L.Pennington, Special Commissioner as aforesaid,

sold the residue of the said eleven hundred and sixty-five acre tract of land to one B. N. Barnett, as shown by the proceedings of the said cause, but your orator finds no deed to him on the records.

By deed dated the 29th day of January, 1901, and recorded in Lee County Deed Book No. 37, page 133, on the 30th day of January, 1901, the said A.H.Ely, together with his wife, conveyed 225 acres of the land purchased by him as aforesaid from the said R.L.Pennington, special commissioner, to one H.A.L.Maness, reserving therein a vendor's lien for unpaid purchase money, as will more fully appear from an inspection of the said deed, an attested copy of which is herewith filed as a part hereof, marked "Exhibit No. 12". Your orator is not advised as to whether the purchase money to secure which the lien was retained in the said deed has been paid, but the said Maness is in the possession of the said land, and still ~~owns the same~~ *claims the same as his own*.

By deed dated the 29th day of July, 1901, recorded in Lee County Deed Book No. 37, page 135, on the 30th day of January, 1901, ~~xxxxxx~~ the said A.H.Ely, together with his wife, sold and conveyed 223 acres, or the residue of the land so purchased by him as aforesaid, to one Chas.H.Maness, reserving therein a lien for unpaid purchase money, all which will more fully appear from an inspection of the said deed, an attested copy of which is herewith filed as apart hereof, marked "Exhibit No. 13". Your orator is not advised as to whether the purchase money to secure which the said lien was reserved in the said last mentioned deed has been paid, but the said Chas. H.Maness is in the possession of the said land, and ~~still~~ *claims that he* owns the same.

By deed dated the 8th day of February, 1902, and recorded in Lee County Deed Book No. 39, page 58, on the 2nd day of June, 1902, the said L.M.Zion, together with his wife, sold and conveyed to one Rebecca Syra, with special warranty, the whole

of the land purchased as aforesaid by him from the said R.L. Pennington, Special Commissier as aforesaid, as will more fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, makred "Exhibit No.14". The said Rebecca Tyra ^{claims to be} ~~is still~~ the owner of the said land, and is now in the possession thereof.

By deed dated the 30th day of July, 1901, and recorded in Lee County Deed Book No.38, page 22, on Oct.12,1901, the said Wm.Eldridge, together with his wife, sold and conveyed to one A.J.Witt 58 acres of the 252 acres purchased by him as aforesaid from the said R.L.Pennington, special commissioner as aforesaid, as will fully appear from an inspection of the said deed, an attested copy of which is herewith filed as a part hereof, marked "Exhibit No.15"., and the said Witt is now in the possession of the said land claiming it as his own.

By deed dated the 30th day of July, 1901, and recorded in Lee County Deed Book No.38, page 23 on the 12th day of October, 1901, the said Wm.Eldridge, together with his wife, sold and conveyed to one Almyra Thomas another parcel of the said tract purchased by him as aforesaid from the said R.L.Pennington, special commissioner as aforesaid, as will more fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No.16. The said Thomas is in the possession of the said land, claiming it as her own.

The said Wm.L.Eldridge is still is the possession of the residue of the said two hundred and fifty-two acre tract of land so purchased by him as aforesaid from the said R.L.Pennington, special commissioner as aforesaid, claiming it as his own.

By deed dated the 1st day of October, 1901, and recorded in Lee County Deed Book No.38, page 470, on March 18th,1902, the said B.N.Barnett, together with his wife, sold and convey-

ed to one J.N.Kelly a portion of the land purchased by him as aforesaid ~~xxxxxx~~ from the said R.L.Pennington, special commissioner as aforesaid, as will more fully appear from an inspection of the said deed, a copy of which is herewith filed as a part hereof, marked "Exhibit No.17"., and the said J.N.Kelly is still in the possession of the said land, claiming it as his own.

By deed dated the 26th day of December, 1901, and recorded in Lee County Deed Book No.38, page 190, on December 31st, 1901, the said B.N.Barnett, together with his wife, sold and conveyed to W.T.Bales, Trustee, among other things, another parcel of the land purchase by him as aforesaid, from the said R.L.Pennington, special commissioner as aforesaid, ^{in trust} to secure to the firm of John R.Gibson & Sons a debt of \$359.00. The said firm of John R.Gibson & Sons is composed of John R.Gibson, James O. Gibson, Chas.B.Gibson, and O.C.Gibson. Your orator is not advised as to whether the said debt has been paid. A copy of the said deed is filed herewith as a part hereof, marked "Exhibit No.18".

By deed dated the 18th day of February, 1902, and recorded in Lee County Deed Book No.39, page 119 on June 30th, 1902, the said B.N.Barnett, together with his wife, conveyed another parcel of the land purchased by him as aforesaid from the said R.L.Pennington, special commissioner as aforesaid, to one Samuel L.McLane, as will fully appear from an inspection of a certified ^{copy} transcript of the same which is herewith filed as a part hereof, marked "Exhibit No.20"., and the said McLane is still in the possession of the said parcel, claiming it as his own.

By deed dated the 15th day of May, 1902, and recorded in Lee County Deed Book No.39, page 115, on the 27th day of June, 1902, the said B.N.Barnett, together with his wife, sold and conveyed another parcel of the land purchased by him as aforesaid from the said R.L.Pennington, special commissioner as afore-

said, to one Nervy R.Parsons, as will more fully appear from an inspection of the said deed, a copy of which ~~was~~ is herewith filed as a part hereof, marked "Exhibit No.20", and the said Parsons is still in the possession of the said parcel, claiming it as his own.

By deed dated the 27th day of June, 1902, and recorded in Lee County Deed Book No.39, page 116, on the same day, the said N.B.Barnett, together with his wife, sold and conveyed to one Simpson Thomas the residue of the track of land purchased by him as aforesaid from the said R.L.Pennington, special commissioner as aforesaid, as will more fully appear from an inspection of a copy of the said deed, which is herewith filed as a part hereof, marked "Exhibit No. 21."

Your orator has been informed that the said Simpson Thomas sold a small parcel of this last mentioned tract to one Joseph Delp, but he finds no such deed on record. The said Thomas is in the possession of the remainder thereof, claiming it as his own.

Your orator ~~has~~ alleges, therefore that the present claimants of the said eleven hundred and sixty-five acres tract of land are H.A.L.Maness, Chas.H.Maness, Rebecca Tyra, W.L.Eldridge A.E.Witt, ~~Almyra~~ Thomas, J.N.Kelly, W.T.Bales, Trustee, John R.Gibson, James O.Gibson, Chas.B.Gibson and O.C.Gibson, partners in trade under the style and firm name of John R.Gibson & Sons, Samuel L.McLane, Nervy R.~~Thomas~~ Parsons, Simpson Thomas, A.H.Ely, B.N.Barnett, and Joseph Delp.

Your orator alleges that there are no other liens against the said Charles E.Mallett.

Your orator further alleges that the said purchasers from the said R.L.Pennington, special commissioner, and their said vendees have cut and removed from the said tracts of land large quantities of valuable timber, the aggregate value of which, was possibly five thousand dollars, but your orator is unable to state how much timber was removed by any one of the said parties.

The prayer therefore of your orator is that the said Chas.E. Mallett, A.H.Ely, H.A.L.Maness, Chas.H.Maness, Rebecca Tyra, Wm.L.Eldridge, A.J.Witt, Almyra Thomas, B.N.Barnett, Simpson Thomas, Joseph Delp, Nervy R.Parsons, Samuel L.McLane, W.T. Bales, Trustee, John R.Gibson, James.O.Gibson, Chas.B.Gibson, Olin C.Gibson and J.N.Kelly be made parties defendant to this bill; that the court's subpoena in chancery issue against the said defendants; that order of publication be duly made, posted and published against the said Chas.E.Mallett; that each of the said defendants be required to answer the said bill fully, but they need not do so under oath, as that is waived; that the said purchasers from the said R.L.Pennington and their vendees be especially required to ^{answer} and disclose how much timber they have each cut and removed from the said land, or parts of it, and the value thereof; that an attachment be issued and levied upon the said eleven hundred and sixty-five acre tract of land; and that the said tract of land, so attached, be sold to satisfy ~~the~~ your orator's said debt; and that full general relief be granted to your orator in the premises.

L.T. Hyatt } P.Q.
Geo P. Bridlin }

Virginia, Lee County, to-wit:

This day William Pennington appeared before me, L.T.Hyatt, a commissioner in chancery for the circuit court of Lee County, Virginia, in said county, and made oath that the statements contained in the foregoing bill, so far as made from his own knowledge, are true, and so far as made from knowledge or information derived from other sources, he believes them to be true. Given under my hand this the 29th day of October, 1902.

L.T. Hyatt,
Commissioner in Chancery.

Wm Pennington

r { In Chancery

Chas. E. Mallett et al.

Bill

1903. 1st January rules

Bill filed & pa-
requisites on home
depts.

f

L. T. HYATT,
ATTORNEY AT LAW,
JONESVILLE, VIRGINIA.

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee Co:

Your petitioners, J. D. Cowan, C. J. McClung, Mathew McClung, R. M. Rhea, and Jacob L. Thomas, merchants and partners in trade under the firm name of Cowan McClung and Co., humbly praying, would respectfully represent and show unto your honor; -

That William Pennington on the 10th day of October, 1896 instituted in your honor's court a certain suit in chancery against Chas. E. Mallett and the Pocket Coal Company, a Corporation, the object of which, as is shown by the said Pennington's bill, is to have enforced a certain vendors' lien which he had retained on certain land, as set out in the bill, which he had sold to the said Mallett and which the said Mallett had sold to the said Pocket Coal Company; now your petitioners will represent and show unto your honor that the said Pennington being indebted to them in the large sum of \$1974.46, with interest from the Third day of May, 1895 and being so indebted to them as aforesaid the said Pennington together with his wife, Barbra J. Pennington, to secure the said debt as aforesaid, and any other advancements which your said petitioners might make to the said Pennington within the next four years, executed to E. W. Pennington, Trustee, a deed of trust upon the land which the said Pennington sold the said Mallett or upon the purchase money still due by the said Mallett upon the said land, and on other land which your petitioners deems unnecessary to mention here. Your petitioners here file a copy of the said deed of ~~xx~~ trust, and pray that the same may be taken as part of this ^{petition} ~~bill~~. And your petitioners will further represent and show unto your honor that the said sum of \$1974.46, secured as aforesaid has not as yet been paid, except the sum of \$110.22 paid Dec. 21, 1895. And further your petitioners will show unto your honor, that by reason of feeling themselves secure because of the said deed of ~~xx~~ trust, on June the 7th, 1895 your petitioners advanced the said Pennington another large amount \$543.50, \$241.66 of which became due

and payable 60 days from the date last aforesaid, and \$301.84 ofxw
which beacme due and payable 4 month fr^om the date last aforesaid.
And your petitioners will furthur show unto your honor that none
of the s aid sums of money last aforesaid have been paid, but are
still due and owing. *Copies of the notes evidencing the said debts as for said
are here filed and proposed to be taken as part of this petition.*

The premises considered your petitioners are advised that
by reason of the said deed of trust as aforesaid they have a lien
upon the purchase price due by the said Mallett to the said Pen-
nington, to the extent of the said debt as aforesaid, and having
a lien by reason thereof, they are advised that they are ~~exdxxx~~ inter-
ested in the subject matter of this suit that they have a right
and ought to be made parties to the said suit; and therefore ^{pay}
that they be made parties to the said suit, that they be allowd to
file this petition, that the said Pennington be required to answer
the same, that if a sale is made according to the prayer of the
bill, that out of the first proceeds of the said sale enough be ap-
plied to pay your petitioner said debt, and may all other furthur
and general relief be granted your petitioners that the nature
of their cause may demand, and good concience dictate. And they
will ever pray &c.

Robt L. Pennington.

Atty. for Cowan, McClung and Co.

Copy of Notes

\$174.46.

Pennington Gap, Va. May 3, 1895

One day after date I promise to pay to the order of
Cowan McClung and Co., at their office in Knoxville, Tennessee,
Nineteen Hundred & Seventy Four and 48/100 Dollars, for value
received, and I hereby waive as to this debt the exemption of lia-
bility of property which I may be entitled to hold under the pro-
visions of the Homestead Law. Witness my hand

Pennington Gap, P.O. Lee Co. Virginia State

William Pennington.

\$241.66.

Pennington Gap, June 7, 1895.

Sixty days after date I promise to pay to the order of
Cowan McClung and Co., at their office in Knoxville, Tenn. Two Hun-
dred and Forty One and 66/100 Dollars, for value received, and I
waive
hereby as to this debt, the exemption of the property which I may
be entitled to hold exempt under the provisions of the homestead
Law. Witness my hand.

Pennington Gap P.O. Lee Co., Va. State.

William Pennington.

\$301.84.

Pennington Gap, Va. June 7, 1895.

Four months after date I promise to pay to the order of Cowan, McC
Clung and Co., at their office in Knoxville, Tenn., Three Hundred
and One and 84/100 Dollars, for value received, and I hereby waive
as to this debt, the exemption from liability of the property which
I may be entitled to hold exempt under the provisions of the Home
stead Law. Witness my hand

Pennington Gap P. O. Lee Co., Va. State.

William Pennington.

601
Dec. 21, 1935
8110.22

(8)

W. Huntington Compl.

U.S. | Petition of
| Lawrence W. C. C.

Chas E. Mallett.

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee Co.,

The answer of Cowan McClung and Co., to an amended bill of William Pennington filed in this honorable court by him against C. E. Mallett, your respondent and others, in which your respondent has previously filed their petition setting out their claim to and interest in the subject matter of the suit, and in this their answer to the said bill they say that they desire to repeat the allegations set forth in their said petition, and ask that it be taken as part of this answer. Your respondents repeat that they are advised that they are entitled to the first lien upon the fund due by C. E. Mallett to him, the said William Pennington, by reason of the assignment made to E. W. Pennington Trustee to secure their said debt, and pray that upon the sale of the property asked for by the said Pennington, which sale your respondent's join in asking, that the first proceeds of the sale be directed to be paid over to your respondents in a sum sufficient to discharge the debt due to them by the said Pennington as set out in the said petition of your said respondents. And upon a hearing may all other further and general relief be granted your petitioners and respondents that is in keeping with equity and good conscience.

And they will as in duty bound ever pray &c.

Robt. H. Pennington

For Cowan, McClung and Co.,

(9)

C. E. Mallett. et al

Ans. } Answer of
} Lewman Mc. Leary & Co.

H^u P^u Pennington.

~~~~~



first.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee Co.:

*motion to quash complainant's attachment and*  
The joint demurrer of H. A. L. Maness, Charles H. Maness, Re-

becca Tyre, Wm. L. Eldridge, A. J. Witt, Almyra Thomas, B. N. Barnett, Simpson Thomas, Joseph Delph, Nancy R. Parsons, J. N. Kelly, and Sam. L. McLane to a bill of complaint and an attachment sued out in this court and exhibited against them and others in chancery in the Circuit court for Lee County by Wm. Pennington.

The said defendants by protestation not confessing or acknowledging all or any of the matters in said bill set forth and complained of, to be true in manner and form as the same is therein set forth and alleged, say that they are advised that there is no matter or thing in said complainant's said bill contained good and sufficient in law to call these defendants to account in this court for the same; and they do demur thereto accordingly, and for cause of demurrer say that the said bill, if the same were true, which these defendants in no wise admit, contains not any matter in equity whereon this court can ground any decree, or give the said complainant any relief or assistance, as against these defendants; BECAUSE,

(1). The said complainant does not have or pretend to have any specific lien upon the lands of these defendants mentioned in his bill, prior to the suing out of his said attachment, and yet he calls upon these defendants in his bill to answer the quantity and value of any timbers taken off of said lands by them respectively; and such being the case these defendants are advised that they ~~had~~ <sup>to</sup> a right cut and take any or all of the timber off of said lands, before any specific liens were acquired on the same, and do the same without being required to account for the same to any one. If said complainant has any lien or claim upon said lands it is simply by reason of his supposed attachment sued out in said cause, and consequently, he can not call for an account of timbers taken before the date of <sup>his</sup> lien, if any he has, which is denied.



(2). As shown by complainant's bill, at the time of the bringing  
1 ~~this~~ suit and the issuance of said attachment thereon, said Mal-  
2 lett in himself had no legal or equitable title or interest in  
3 the lands mentioned in said bill; and such being the case, such  
4 lands, although once owned by said Mallett, are not liable or sub-  
5 ject to be attached upon under a general attachment for the in-  
6 debtedness of said Mallett to said complainant. The attachment in  
7 this cause, as will be seen from the endorsement of the Clerk on  
8 the summons is a general one, and not for any specific property.  
9 Section 2967 of Code provides: "Every attachment (except where  
10 it is sued out specificly against specified property) may be  
11 levied upon any ~~estate~~, real or personal of the DEFENDANT". Now  
12 this attachment being a general one, it can not be levied upon  
13 any estate, except that of said Mallett. If the Complainant had  
14 on account of the failure to record the deed of Mallett to the  
15 have desired to have ~~had~~ the lands of these defendants attached  
16 he should have had a specific attachment, and the same levied.  
17 But he has not had this done. He had a general attachment in-  
18 stead. He prays for a specific attachment in his bill, yet he  
19 did not take it from the clerk.

(5). The attachment endorsed upon the summonses by the clerk was  
20 issued by the clerk without being first supported by the affidavit  
21 required by sections 2959 & 2964 of the Code. The complainant  
22 made no affidavit in this cause, save that of the non-residency  
23 of the defendant Mallett. This alone is insufficient to warrant  
24 the issuance of an attachment. There must be an affidavit of two  
25 other things, (1), that the plaintiff's claim is believed to be  
26 just, and (2) a sum certain which (at the least) ~~xxxxxxx~~  
27 ~~which~~ the affiant believes the plaintiff is entitled to or ought  
28 to recover. It is true, the plaintiff swore to his bill to the  
effect that the allegations of the same in so far as made upon  
his own knowlwdge are true, and in so far as made upon the infor-  
mation of others, he believed to be true. We do not think this will  
take the place of the affidavit required by said statutes. It  
has been decided in this State, (Fisher & Bro vs. March, 26 G.765)

*Sim vs. Syner 96 G. 7-*



1 if an affidavit had been made, which referred to and adopted  
2 the bill of the complainant as a part of the same, and there  
3 was a sufficiency in both affidavit and bill to meet the re-  
4 quirements of the statutes, such would be sufficient. But that  
5 has not been done in this case. It has never been held in Va.,  
6 the mere swearing to the bill, of the complainant is sufficient  
7 to warrant the issuance of an attachment thereon. The statute  
8 requires both affidavit and bill, and one can not take the  
9 place of the other. The statute reads: "On ~~xxxxxxx~~ a bill  
10 in equity filed for the purpose, have an attachment to secure  
11 and enforce the claim, <sup>the</sup> on affidavit made, etc". Thus, <sup>the</sup> bill and  
12 affidavit are inseparable. One supports the other; neither can  
13 stand without the other.

12 (4). The bill sets out that said Mallett made the Pocket  
13 Company a deed to the lands ~~mentioned~~ in said Complainant's  
14 bill, but does not make the said Company a party thereto, which  
15 ought to have been done.

16  
17 (5). The attachment endorsed by the clerk on the summonses  
18 issued in said cause is not addressed to any sheriff or con-  
19 stable of said County. Every attachment issued is required by  
20 section 2965 of the Code to be addressed to some sheriff or  
21 Constable of the county wherein it issued.

21 (6) X

22 Wherefore, and for other divers errors and defects in the sa  
23 said bill of complaint contained, and appearing on the face  
24 thereof, the said ~~defendants~~ defendants do as aforesaid de-  
25 mur in law thereto, and do humbly crave the judgement of this  
26 court, whether they can be compelled or ought to make any answer  
27 thereunto otherwise than as aforesaid. And these defendants  
28 *that said attachment be set aside, quashed, & dismissed & that they*  
humbly pray <sup>to</sup> be hence dismissed with their costs, etc.

*Jo. More &  
Remington Per. p. d.*



H. B. L. Mancoske

addes } Demurrer

Wm. Pennington

1st January Rules 1903  
filed.

A. B. Meincey Clerk

\$ 5



X (6) The court is without jurisdiction in this cause. This is a proceeding in rem, dependant for a standing in court upon subject matter which the court can control. The endorsement on the summons does not describe any particular estate, and the sheriff who made the return of the process does not show any attachment of any particular real estate, nor any estate at all. Sec. 2967 provides that an attachment is sufficiently levied, when the officer to whom it is delivered for service (that is the Sheriff), shall endorse upon such attachment to the following effect, "Levied upon the following real estate of the defendant\_\_\_\_, to wit &c" and signed by the sheriff. Sec. 2971 provides that the plaintiff shall have a lien on any real estate mentioned in such <sup>an</sup> endorsement by the officer on the attachment or summons as prescribed by sec. 2967, from the suing out of the same. Now the lien of the plaintiff depends upon (1) the endorsement or order to attach, made by the clerk, (2) the endorsement of the sheriff showing the levy according to said section. We do not think the first was properly done, and the second requisite was not done at all. The jurisdiction of the court depends entirely upon a legal attachment, founded upon a legal levy as was said in the case of Robertson vs. Hoge 83 Va page 126, this case therefore should be dismissed or sent back to rules for proper attachment proceedings if the plaintiff would prosecute his suit further.

( See 4 Minor, 575 and cases cited. )



WM. PENNINGTON

vs.

C. E. MALLETT ET AL.

This cause came on this, the 20th day of Sept., 1904, to be heard upon the bill of review of said complainant, seeking and praying the Court to correct and set aside, for errors apparent on the face of the record, the decree entered in the original cause of said complainant vs. said defendants, on the 14th day of July, 1903; and the motion and demurrer of said defendants (except C. E. Mallett) by their counsel to dismiss said bill of review; and was argued by counsel: On consideration of the original bill of said complainant and exhibits filed therewith, and the original motion of said defendants to quash and abate the attachment issued and levied in said original cause, and the decree entered in said original cause on July 14, 1903, <sup>the decree entered according to the filing of said bill of review</sup> and of the whole record, it is adjudged, ordered and decreed, that said bill of review be, and the same, is hereby dismissed, because the Court is of opinion that there was no error in said decree of July 14, 1903, sufficient to review the same. And it is further decreed, that the said defendants recover from the said complainant their costs in this cause expended.

1904



decreed, that the said defendants recover from the said 1903, sufficient to review the same. And it is further opinion that there was no error in said decree of July 14, and the same, is hereby dismissed, because the Court is of its adjudget, ordered and decreed, that said bill of review be, original cause on July 14, 1903, and of the whole record, it ~~the cause being removed to the filing of said bill~~ reviewed in said original cause, and the decree entered in said

exhibits filed therewith, and the original motion of said

On consideration of the original bill of said Comptroller and

no claims are in review; and was advised by counsel:

On said defendant (except C. E. Wellett), by

on the 14th day of July, 1903; and the motion picture

In the original contract of said complainant vs. said defendants,

errors apparent on the face of the record, the names entered

and the President of the Court to correct and set aside, for

to be heard upon the 21 of review of said complaint.

This came on first, the 30th day of Sept., 1864.

C. F. WILLETT ET AL.

43.

H. W. BENTINGTON



Wm Pennington

Plaintiff

vs { In Chancery.

Chas E. Mallett et al Defendants

This day came the plaintiff, by his attorneys, and tendered and asked leave to file his bill for the review of the decree entered in this cause on the 14 day of July 1903 of this court, to the filing of which the defendants, H. A. L. Mauss, Chas H. Mauss, Rebecca Tyra, Wm L. Eldridge, A. J. Witt, Almira Thomas, B. N. Barnett, Simpson Thomas, Joseph Delph, Nancy R. Parsons, J. N. Kelly and Sam L. McLane, by their counsel, objected; and the said objection was argued by counsel.

On consideration whereof, the court is of opinion that there was error in the said decree of July 14, 1903, and it is adjudged, ordered and decreed that the said bill of review of the plaintiff be allowed to be filed, and the same is accordingly done. And thereupon the said defendants, H. A. L. Mauss, Chas H. Mauss, Rebecca Tyra, Wm L. Eldridge, A. J. Witt, Almira Thomas, B. N. Barnett, Simpson Thomas, Joseph Delph, Nancy R. Parsons, J. N. Kelly and Sam L. McLane, by their counsel, appeared to said bill of review and waived the issuance and service of process thereon, and the cause is continued.



Wm Pennington  
& J. L. Chy  
Chas. E. Mallett et al

Decree filing bill of  
review.

Eni. Ct. B. No. 7,  
page 485.

Enter this decree  
May 23 1904  
J. A. W. Thum



Wm. Pennington, Complt.,

vs.

In Chancery.

Charles E. Mallett, et als., defts.

Upon the calling of this cause, the defendants, H.A.L. Maness, Charles H. Maness, Rebecca Tyree, Wm. L. Eldridge, A.J. Witt, Almyra Thomas, B.N. Barnett, Simpson Thomas, Joseph Deplh, Nancy R. ~~Rehkins~~ Parsons, J.N. Kelly, and Sam. L. McLane by their attorneys moved the court to quash, abate and dismiss the attachment sued out in said cause by said complainant, for the following reasons, to-wit:-

First, because the plaintiff undertook to supply the process on which the sheriff was alleged by him to have made an endorsement of a levy of real estate, on the affidavits of Geo. P. Cridlin and A.B. Munsey;

Second, because according to the rules made and taken up by the clerk of this court, the bill of said complainant was not filed until on some day of the first Jan., rules, 1903, and not at the time of the suing out of said plaintiff's attachment. Said attachment was sued out Oct., 30th, 1902, and made returnable to the 1st Decemeber rules, 1902. But the plaintiff here offered to show by the affidavit of the clerk of this court that he did file his Bill at the time of the suing out of said attachment but the court being of opinion that such would be contradicting the record, ~~and~~ would therefore not consider such affidavit;

Third, because the plaintiff, nor his agent or attorney did not make affidavit before the suing out of his attachment that ~~he~~ to the best of his belief he was entitled to or ought to recover at the least the sum of money which he alleged in his bill was due him from said Mallett *or of any other sum;*

Fourth, because the plaintiff's order of publication was not posted at the front door of the court house of this county on the first day of next term of the county court for Lee County, next after such order was entered; *but the plaintiff moved the court to remand the cause to rules in order that he might have a new order of publication; which motion is denied*



Fifth, because the order of attachment endorsed by the clerk upon the process is not specifically directed to any sheriff or constable of this county for execution; and

Sixth, because the sheriff did not endorse any levy of real estate upon said attachment describing the same in any way.

And the court having heard argument both on the part of the said plaintiff and <sup>said</sup> ~~defendants~~ <sup>Counsel</sup> upon said motion is of opinion that said attachment should and ought to be quashed, abated and dismissed for the grounds stated in the second, third and fourth ground assigned aforesaid for so doing. On consideration of all which and for the reasons aforesaid it is adjudged, ordered and decreed that said attachment be and the same is hereby quashed, abated and dismissed, and that also said plaintiff's said bill be dismissed, and the said defendants will recover their costs from said plaintiff.

*Memo. The plaintiff feeling himself aggrieved by this order, and announced his purpose of appealing from the judgment of the Court in this case, this judgment is suspended for sixty days - next hereafter.*



Mrs. Pennington

vs. } Linn No. 1

Charles E. Macintosh

Eu C.O.B. 7 p. 348-9.

enter this

July 14 1903

H. A. W. Sherr



Wm. Pennington, Compl't,

Vs.

In Chancery.

C. E. Mallett, et als. Defts.

This cause came on again this day to be heard upon the papers formerly read therein, and the report and deed of E. W. Pennington filed herein, and was argued by counsel: On consideration of all which and said report being unexcepted to, and for reasons appearing to the court it is hereby adjudged, ordered and decreed, that said report and deed be and are each hereby confirmed. And the said C. D. Russell and Isaiah Pennington will pay to the said E. W. Pennington the sum of five dollars for his services in making them the said deed, And there being nothing else to do in this cause, it is stricken from the docket.



(16)

*Wm. Pennington*

vs ~~Book~~ *Deane* *final*

*L.E. Mallett & Co*

---

*Entered on*  
*C.D.B. No 75.98*

*Enter this*  
*July 8<sup>th</sup> 1902*  
*Haw*



Wm. Pennington, Complt.

vs.

In Chancery.

C.E. Mallett, et als., defts.

This cause came on again to be further heard upon the papers formerly read therein, and the report of receipts and disbursements of Comr. E.W. Pennington, and exceptions thereto of Wm. Pennington and I. Pennington, and was argued by counsel: On consideration of all which and for reasons appearing to the court, the said exceptions are over-ruled; it is therefore adjudged, <sup>and statements therewith</sup> ordered and decreed that said report <sup>^</sup> of said E.W. Pennington be and the same are hereby confirmed, and said Pennington hereby released and absolved from any future liability on his bond as such commissioner. And it further appearing to the court from said Pennington's report that said C.D. Russell and Isaiah Pennington have paid in full the purchase price of the lands which they bought in said cause, and are now entitled to a deed to the same, it is further adjudged, ordered and decreed, that E.W. Pennington, who is hereby appointed a special commissioner for the purpose, will make and deliver to said Russell and Pennington a deed with covenants of special warranty, to the lands which they bought in this cause, and report his action to court as soon as possible; and to the time of the making of such deed and the filing of ~~his~~ his report, this cause is passed.



Wm Pennington

vs } Oresu

Co. E. Malletts

Entered on C.O.B.  
No 7. 87

Enter this  
July 7<sup>th</sup> 1902

H. A. W. Blair



Wm. Pennington.

Comolt.

vs.

In Chancery.

J. E. Mallett et als.

Defts.

This cause came on again to be heard upon the papers formerly ~~and~~ read therein. and the report of Comr. E. W. Pennington. showing his receipts and disbursements up to June 1st. 1898. filed in this cause on the ..... day of June. 1898. and was argued by counsel. On consideration of all which. it is adjudged ordered and decreed. that said report and the receipts and disbursements of said Comr. Pennington. ~~be~~ and the same is hereby confirmed. And the said Comr. Pennington will receive from said Russell & Pennington any sum of money which they may desire to pay him on the bonds vet <sup>owing</sup> ~~be~~ by them on account of their purchase of lands in this cause. before the same becomes due. which he will disburse as directed in the order of June. 12th. 1897 entered in this cause. And this cause is continued.



(12)

Wm. Huntington

to } Deane, no. 3

L. E. Mallitt et al

Eu. C. O. B. 6 p. 103-4

Enter this

June 8 1898.

N. F. M.



Wm. Huntington Complt

vs.

Chas. E. Mallott et al Dfts

} In Chancery.

This cause came on this day to be heard upon the papers formerly read therein, and the report of sale made by Leaver. - E. W. Huntington, to C. D. Russell and J. Huntington, which report was filed on May 24<sup>th</sup> / 1897, and the exceptions of Cowan, McChung vld to the confirmation of said sale and report: On consideration of all which, and for reasons appearing to the Court it is adjudged ordered and decreed that the exceptions of said Cowan, McChung vld. be and are overruled in so far as they object to the confirmation of said sale and report, and sustained as to the insufficiency of the price offered by said purchasers. And it is further adjudged, ordered and decreed that <sup>said</sup> sale be confirmed to said C. D. Russell and J. Huntington, but they, their heirs or assigns and all other persons are hereby enjoined and prohibited from cutting, taking and removing from said land so purchased.



ed as aforesaid until they shall  
have given other <sup>good</sup> personal security  
for the purchase price of <sup>said</sup> land  
to said Court. W. H. Huntington; and  
when said deferred payments are  
due, said W. H. Huntington will  
proceed to collect the same and  
pay enough thereof to Cowan,  
McLung & Co. to discharge  
their recovery in this cause, and  
the residue if any hold subject  
to the future order of the Court;  
and it is further adjudged  
ordered and decreed that on  
account of any failure to col-  
lect said sum & of recovery from  
said purchasers by reason of the  
insufficiency of the present  
security, said Court. W. H. Huntington  
and his sureties on his bond as  
such Court. is hereby released  
from all liability; and the costs  
in said Court. Huntington's hands,  
he will pay out to those to whom  
it belongs. And this cause is  
continued.



(14)

Wm. Punnington

vs } Deane no. 2

L. E. Mallitt & al

C. B. & O. C p. 7481

Entered this

June 12 1847

(N. F. M.)



William Pennington Complt.,  
vs. } In Chancery  
Chas E. Mallitt et al Defs }

This cause came on this day to be heard upon upon the bill of the Complainant and exhibits filed therewith, The petition of Cowan, McColung & Co., setting out that they were interested in the money due said Complainant from said Mallitt by reason of an assignment made to them on May, 3<sup>rd</sup>, 1895, and they praying to be made parties to said bill, leave was granted to said Complainant to amend his bill, making said Cowan, McColung & Co parties thereto, which by consent of counsel for plaintiff and Counsel for Cowan, McColung & Co was done; and thereupon said Cowan, McColung & Co filed their answer to said bill to which answer the Complainant replied generally. And from the pleadings in said cause, it appears that the defendant Chas. E. Mallitt is a non-resident of this State and that the Pockett Company is a foreign corporation and it has no officer or agent within the State on whom process could have been served, and it further appearing to the Court that an order of publication has in a newspaper published in Sta. Ann, Virginia been made, posted and published for four successive weeks prior to 15 days before the first day of this term of the Court, and that a copy of the process in this cause against the said Pockett Company has been made, posted and published in a newspaper published in the town of Janesville, Wis. for four



successive weeks prior to 15 days before the first day of this term of the Court, and said Mallitt and said Jockett Company failing to appear, plead or demur, on motion of said Complainant said bill with its amendments are taken for confessed as to them. On consideration of all which and for reasons appearing to the Court it is adjudged ordered and decreed That said Leowan McLeung & Co., or assignee of said Complainant have a first lien on the lands in the bill and proceedings mentioned for the sum of \$1974.46 due May 4<sup>th</sup> 1895, subject to a credit of \$110.22 Dec., 21<sup>st</sup> 1895, the sum of \$241.66 due August 7<sup>th</sup> 1895 and the sum of \$301.84 due Oct., 7<sup>th</sup> 1895 and That Mrs. Pennington, said Complainant has a second lien on said land for the sum of \$14585.70, with interest thereon from the 10<sup>th</sup> day of Oct., 1895 till paid; and it is further adjudged ordered and decreed That said Leowan, McLeung & Co. as assignee of said Complainant recover from said Leas. E. Mallitt the sum of Two Thousand Five hundred and Seventy, dollars and ninety-six cents, with legal interest on \$1974.46 a part thereof from May 4<sup>th</sup> 1895 till paid, subject to a credit of \$110.22 as of Dec., 21<sup>st</sup> 1895, with legal interest on \$241.66 on other part of thereof from August, 7<sup>th</sup> 1895 till paid and with legal interest on \$301.84 the residue of said sum of \$2517.96 from Oct., 7<sup>th</sup> 1895 till paid; and That said Complainant recover



from said Chas. E. Mallitt the sum  
of \$14585.70 with interest thereon  
from the 10<sup>th</sup> day of October, 1895 till  
paid and the costs of this suit; and  
if said sums of money be not  
paid within 30 days from this date  
then E. W. Huntington who is hereby  
appointed a special for the purpose  
will after advertising the time, terms  
and place of sale by written or  
printed notices posted at the front  
door of the Court house of this county,  
at the post office in the town of Hun-  
tington Gap, in the neighborhood of  
said lands and at such other places  
as he may deem proper, for 30 days,  
expose said lands for sale, ~~to the~~  
~~highest~~ or enough thereof to pay  
said sums of money, to the highest and  
best bidder, at the front door of the  
Court house of this county, on some  
court day, on a credit of one, two and  
three years time, except a sum suffi-  
cient to pay the costs of suit and  
commissions of sale which he will  
require to be paid down (And for the  
deferred payments he will take bonds  
payable to himself as commissioner,  
bearing interest from date of sale and  
with good personal security. And  
he will report his action to Court.  
But before entering upon the duties  
hereunder, said Huntington will ex-  
cute bond before the Clerk of this



Court in the penalty of \$10000.00  
conditioned to faithfully to discharge  
his duties as such Commissioner  
and to account for all moneys  
which may come into his hands by  
virtue of his being Commissioner in  
this cause. And this cause is con-  
tinued.

(27)

Wm. H. Pennington

vs } Green no. 1

C. E. Wallbridge et al

Ex. C. D. B. P. 5724.

Enter this

March 4 - 1897.

W. H. Pennington



Virginia, Lee County, to-wit:-

William Pennington. - - - - -Plaintiff  
against.

Charles E.Mallett et al - - - - -Defendants.

This day personally appeared before me, L.T.Hyatt, a commissioner in Chancery for the said County, William Pennington, who being by me duly sworn, made oath that Charles E.Mallett, Defendant in the above styled cause is not a resident of the State of Virginia.

Given under my hand, this the 27th day of October, 1902.

*L. T. Hyatt*  
\_\_\_\_\_  
Commissioner in Chancery.

*Oct 29 1902*



William Pennington

vs } Affidavit for O. P.

Chas. E. Mallett et als

---

Filed Oct 30th 1902

A. B. Munsey Clerk



Wm. Pennington, Complt.

Vs,

In Chancery.

C.E. Mallette et als. Defts.

To the HON. H.A.W. Skeen, judge of the circuit court for Lee County.

Your undersigned, E.W. Pennington, special commissioner, would respectfully report unto your honor that heretofore he was appointed in the above styled cause <sup>a special commissioner</sup> to make C.D. Russel and Isaiah Pennington the purchasers of the land in said cause mentioned and described, that he has performed that duty and here files the deed which he has made to said parties, for the inspection of the court. And now having performed his duties according to the appointment of your honor, he begs to be releaved from further duties hereunder.

All of which is respectfully submitted.

This the 3rd., day of July, 22 1902.

E. W. Pennington

Special Commissioner,



(15)

Mrs. Pennington

Report of  
of Cause for  
and

L. E. Maltbie

Filed July 8th 1902  
A. B. Munnery Clerk

Solely Commissioned,

*John A. Munnery*



Wm. Pennington. Complt.

vs.

In Chancery.

C. E. Mallett. et als. Defts.

To The Hon. W. T. Miller. Judge of the Circuit Court for Lee County:

Your undersigned commissioner. who was directed by an order entered in the above styled cause. on June. 12th.. 1897. to collect from C. D. Russell and J. Pennington. the purchasers of the land mentioned in this cause. <sup>namely</sup> the due by them on their purchase. and to pay the same over to Cowan. McClung & Co. for a sufficiency thereof to discharge their debt against Wm. Pennington: and also to pay out to those entitled <sup>to</sup> ~~the~~ costs money which he then had in his hands. begs leave to report that he has paid out on costs in this cause to those entitled and retained in his hands as commissions the sum of \$104.00: and from said Russell & Pennington he has up to this date received on the purchase price of the land bid in by them the sum of \$1025.63. which sum your commissioner has paid over to said Cowan. McClung & Co. Your commissioner here files a statement of the entire receipts by him on account of his commissionership in this cause. and how he has disbursed the same. which statement shows there is now in his hands the sum of \$5.00. The sum paid by said Russell & Pennington was paid me through G. W. Pennington and A. K. DeBusk. and is sufficient to discharge the first bond of said Russell & Pennington with \$.7.54 credited on the second bond. which will not be due until May. 17th.. 1899. But said Russell & Pennington inform me. they want to pay the same off perhaps before the same becomes due. Now your commissioner prays that this report. and the statement of his receipts and disbursement be confirmed: and that he be authorized to receive from said Russell & Pennington whatever sums they may want to pay on the bonds yet due by them. All which is respectfully submitted. This June. 1st.. 1898.

E. H. Pennington

Specila Commissioner.



(13)

Wm. Cunningham  
Report of Receipts  
vs } Disbursement  
No. 1.

Le. E. Mallitt & Co.

Filed June 1898



Wm. Pennington      Complt.

vs.

C. E. Walleth et als. Defts.

To the H. n. B. A. W. Skeen, Judge of the Circuit Court f. c Lee County:

Your undersigned, who was heretofore in this cause directed to collect and pay out the proceeds of the sale of the land mentioned in this cause and sold to C. D. Russell and L. Pennington, beg leave to report that he has collected from said Russell and Pennington the whole of the purchase price of said land except \$160.00 which sum was paid to your commissioner by A. K. DeBusk, one of their sureties; that the whole of the purchase price of said lands as collected have been paid out to the parties <sup>as</sup> shown in an exhibit marked "S" herewith filed and asked to taken as a part of this report. On the last note given on the purchase price of said land, your commissioner took judgement at law, and it was on this judgement said Debusk paid said \$160.00. Said Russell and Pennington paid all of said purchase price of said land except that paid by their security, DeBusk. Now, the land having been paid for your commissioner, supposes that said Russell and Pennington are entitled to a deed to the same. And now having performed his duties as such commissioner, and having paid out the funds which came to his hands, your commissioner, prays to be exonerated from any liability on his bond given as such commissioner.

This February, 21st., 1902.

E. W. Pennington



Wm Pennington

vs } Report of  
Receipts and  
disbursements

C. E. Mallett et al

Filed July 1st 1902

A. B. Munsey Clerk



7/2

Lin County, to-wit:

I Geo. W. Pennington, a citizen  
of Lin County, do hereby swear  
that I am worth over my  
debts and liabilities and "Poor  
Man's" law, from two to  
three thousand dollars; and  
this consists of both personal  
and real estate, real  
estate in my own name; I have  
a deed to part of it from Elk.  
Pennington and a title bond  
from R. H. Orr for the other;  
I think my real estate  
worth about \$2500<sup>00</sup>

Given under my hand this  
May, 17<sup>th</sup> 1897.

G W Pennington

The above statement is sworn  
to before me, this May  
17<sup>th</sup> 1897 by Geo. W. Pennington.

A B Mursey C.C.

I, R. E. Evans, a citizen  
of Lin County do hereby  
swear that I am worth about  
fifteen hundred dollars, I have  
about 200 <sup>acres</sup> of land in my  
own name. My deed is re-



recorded in the County Court  
Clerk's office of this County  
This May, 17<sup>th</sup> 1897 J. S. Burgue

I J. S. Burgue a citizen  
of this County do hereby  
swear that I am worth  
about \$500<sup>00</sup> above my  
debts and liabilities;  
this is mostly in debts of  
people who owe me.  
This May, 17<sup>th</sup> 1897.

Witness,  
B. H. Seavey  
A. N. Pennington

J. S. Burgue  
Morse

A. N. Pennington a citizen  
of this County, do hereby  
swear that I am worth  
above my debts and liabilities  
about one thousand dollars  
and this is mostly in real estate  
This May, 17<sup>th</sup>, 1897.

A. N. Pennington

The foregoing affidavits sworn  
to before me by Geo. H. Pennington



A. L. Evans, J. S. Burgin and  
A. H. Oumington. This May  
17<sup>th</sup> 1897 A. B. Mursey Clerk



Mrs. Punnington Complt.  
vs. } In Chancery  
W.E. Mallitt et al. Dft.

To the Hon. Wm. T. Miller, Judge of the  
Circuit-Court for Lee County:-

Your undersigned, who was at  
the March term, 1897 of your honor's  
court appointed a Commissioner in  
said cause to sell the lands men-  
tioned in said cause, begs leave  
to report that after advertising the  
time, terms and place of sale  
for more than 30 days by written  
notices, posted in the neighborhood  
of said lands, at the post office  
in the town of Punnington Gap and at  
the front door of the Court-house  
and at two other public places,  
(a copy of which advertisement  
is here filed) he, on the 19th day of  
May, 1897, at the front door of  
the Court-house of said County,  
(said day being a Court day) in  
the presence of a large crowd  
of people, offered said lands  
for sale at public outcry to  
the highest and best bidder,  
He first offered ~~in~~ separately  
the tract known as the 170 acre  
and the tract known as the 824  
acre tract, but got no bidders  
for the same. Then he offered  
the said two tracts for sale together,



and after considerable bidding  
and buying said two tracts were  
knocked down to Chas. D. Russell  
and Isaac Huntington for the sum  
of \$3000<sup>00</sup>, who were the highest  
bidders on said two tracts of  
land. Your Court. sold said land  
subject to previous conveyances  
made therein to one S. A. Stratton.  
Said purchasers paid down  
on costs & commissions of sale  
\$109<sup>00</sup>, and executed to me, their  
three several bonds, bearing  
interest from date of sale  
for \$963.67 each, with R. L.  
Evans, A. H. Huntington, John S. Bur-  
gin and Geo. H. Huntington as  
their sureties. Your Court. was not  
satisfied as to the sufficiency  
of the security offered, and is not  
yet satisfied with the same, al-  
though said purchasers have had  
their said sureties make offi-  
davits of their worth over their  
debts and liabilities, which are  
here filed for the inspection of  
your honor, and from this free  
aggregate \$5000<sup>00</sup> over and above  
debts and liabilities. The land  
sold to said purchasers is princi-  
pally valuable for its poplar timber,  
and your Court. understands from



them that it is their intention to  
begin soon after confirmation of  
this sale, to cut and remove  
the timber therefrom, which may  
be done before the first bond  
becomes due. So your Court, thinks  
that unless other and better person-  
al security be offered said sale  
should not be confirmed. If it  
is confirmed, your Court, begs  
that it be confirmed ~~it~~ without  
holding him liable for the securi-  
ty offered. The price offered  
your Court, thinks is all right, and  
probably as much as said land  
is worth, owing to the fact that  
it is mountain land, and the miner,  
at right having long ago been  
conveyed to said Stratton. All  
which is respectfully submitted.  
This May, 22<sup>nd</sup>, 1897.

E. H. Huntington  
Special Court.



Mr. J. Cunningham

Report of  
Sales

Le. E. Mullett & Co.

Filed May 24<sup>th</sup>. 1897.

A. B. Murray Clerk

The confirmation of the sale reported herein is objected to because, the security offered is insufficient; they are men considerably involved & possess very little personal estate, the purchasers have sold the timber, & expect to proceed to cut the same, & because the court desires to be released if the court should confirm. & he says the bonds are not good.

Robt. K. Cunningham Atty  
for George McLenny & Co.







'98

|            |    |                                          |         |         |         |
|------------|----|------------------------------------------|---------|---------|---------|
|            |    | <i>Am'ts bro't. over</i>                 |         | 564 92  | 776 33  |
| Oct. 14    | 1  | To amt. paid Cowan, McLaughlin & Co (3)  | 206 43  |         |         |
| " 14       | 2  | By " from R.P. thro. DeBuck (14)         |         |         | 102 56  |
| Nov. 17    | 3  | To taxes paid                            | 22 12   |         |         |
| Dec. 15    | 4  | By amt. from R.P. thro. DeBuck           |         |         | 114 40  |
| " 16       | 5  | To " pd. Cowan, McLaughlin & Co (15)     | 115 00  |         |         |
| Jan. 3/99  | 6  | By " from R.P. thro. Starkey & Gady      |         |         | 100 00  |
| "          | 7  | To " paid Cowan, McLaughlin & Co (16)    | 110 00  |         |         |
| Jan. 28/99 | 8  | By " from R.P. thro. DeBuck              |         |         | 110 05  |
| " 20       | 9  | To " paid Cowan, McLaughlin & Co (17)    | 120 00  |         |         |
| June 10/99 | 10 | By " from R.P. thro. DeBuck              |         |         | 1175 52 |
| June 12/99 | 11 | To " paid Cowan, McLaughlin & Co (18)    | 200 00  |         |         |
| June 23    | 12 | By " from Starkey & Co for R.P.          |         |         | 50 00   |
| June 26    | 13 | " " " DeBuck do                          |         |         | 55 01   |
| July 27    | 14 | " " " Starkey & Co do                    |         |         | 51 00   |
| July 31    | 15 | To " paid Cowan, McLaughlin & Co (19)    | 160 00  |         |         |
| Sept 30    | 16 | By " Gady & Co. for R.P.                 |         |         | 110 83  |
| Oct. 3     | 17 | To " paid Cowan, McLaughlin & Co (20)    | 120 00  |         |         |
| Nov. 11    | 18 | " " " for taxes 1899 (21)                | 9 80    |         |         |
| May 17     | 19 | By amt. from Gady & Co. for R.P.         |         |         | 106 50  |
| May 17     | 20 | To " paid Cowan, McLaughlin & Co (22)    | 115 00  |         |         |
| June 27    | 21 | By " from Gady & Co. for R.P.            |         |         | 100 50  |
| " 28       | 22 | To " paid Cowan, McLaughlin & Co 23      | 108 43  |         |         |
| 11-16      | 23 | " " " Taxes for 1900 24                  | 5 76    |         |         |
| 12-1       | 24 | By amt. from C.D. Russell                |         |         | 100 00  |
| 12-3       | 25 | To amt. paid Cowan, McLaughlin & Co 25   | 25 10   |         |         |
| 12-3       | 26 | " " " Punnington Bros note 26            | 20 30   |         |         |
| 12-3       | 27 | " " " E.H. Punnington note 27            | 32 09   |         |         |
| 5-1        | 28 | By " from C.D. Russell thro. Albert Kirk |         |         | 50 00   |
| 5-7        | 29 | To " pd. Powers Sill, & Co 28            | 66 75   |         |         |
| 9-25       | 30 | By " from Russell                        |         |         | 24 00   |
|            |    |                                          | 2001 70 | 2025 70 |         |



|          |  |                                   |                |                |
|----------|--|-----------------------------------|----------------|----------------|
|          |  | Amts. brok. over                  | 2001 70        | 2025 70        |
| 9-25     |  | To Amt. P. L. Powers, Little & Co | 24 00          |                |
| 1902     |  |                                   |                |                |
| 1-6      |  | By amt. from A. H. DeBuck         |                |                |
|          |  | security for Russell & Huntington |                | 160 00         |
| 1-9      |  | To costs pd. A. B. Munsey         | 5 89           |                |
| 1-6      |  | To city. fr. pd. Huntington Bros  | 2 50           |                |
|          |  | " club's fee pd. B. M. Morgan     | 25             |                |
|          |  | " first row, pd. L. P. Ely        | 10 00          |                |
|          |  | " amt. pd. Powers, Little & Co    | 139 99         |                |
| 11-30/01 |  | " " " taxes for 1901              | 1 37           |                |
|          |  |                                   | <u>2185 70</u> | <u>4185 70</u> |
|          |  |                                   |                | 1134 63        |
|          |  |                                   |                | <u>2180 70</u> |
|          |  |                                   |                | <u>3314 33</u> |



32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1  
Mrs. Fumington

Statement of  
vs { Comm. Fumington's  
account.

C. E. Mallett et al



This Deed made this the 10th day of October A.D.1891 by Wm.Pennington and Barbary J. his wife parties of the first part, to Chas. E.Mallett of Brooklyn New York party of the second part,

Witnesseth, that for and in consideration of the sum of fifteen dollars per acre for the tract of land hereinafter first described and twenty-five dollars per acre for the tract of land hereinafter last described, five hundred dollars in hand paid, the receipt of which is hereby acknowledged, five hundred dollars due and payable January 1st, 1892, and the residue with legal interest thereon from this date, payable on or before Oct.10th,1896, and the accruing interest on said last deferred payment due and payable semi-annually beginning with April 10th, 1892, and so on, until said last deferred payment is fully paid. The said parties of the first part do and each of them doth hereby give, grant, bargain, sell and convey and deliver unto the said Mallett all of two certain tracts or parcels of land lying and being in Lee County, in the Pocket Country except such of the same as was on the 23rd day of September 1887, conveyed to F.A.Stratton by said parties of the first part. The first of which tracts of land being the same land that was conveyed by D.S.Dickinson Benj.D.Martin and M.B.D.Lane, Comr.&c. to said Wm.Pennington and bounded as follows, to-wit:

Beginning at a small red oak on top of the dividing ridge between Big branch and Coal Bank branch, thence with the top of said ridge N.24 $\frac{1}{2}$  W.11 $\frac{1}{2}$  poles to a chestnut, N.3 $\frac{1}{2}$  E.31 $\frac{3}{4}$  poles to a small red oak bush, N.21 W.28 poles, N.12 $\frac{1}{2}$  E.16 $\frac{3}{4}$  poles, N.4 W.10 poles, N.22 E.19 $\frac{1}{2}$  poles, N.23 $\frac{1}{2}$  W.17 $\frac{1}{2}$  poles, N.49 $\frac{1}{2}$  W.30 $\frac{1}{2}$  poles to a hickory on the top of said ridge, thence leaving the top of said ridge and with the top of another spur or ridge N.34 W.4 $\frac{3}{4}$  poles to a black gum, N.89 $\frac{1}{2}$  W.20 poles to a black gum and white oak, S.47 W.10 poles to a red oak, S.25 W.11 $\frac{3}{4}$  poles to a chestnut, S.7 $\frac{1}{2}$  W.22 poles to a double chestnut, S.3 $\frac{1}{4}$  W.40 poles to a red oak, thence leaving the top of said ridge S.81 W.33 poles to a poplar on the west side of Coal Bank branch, N.79 $\frac{1}{2}$  W.20 poles to a beech on the west side of Puckets creek, S.62 W.22 poles to a dogwood on a ridge N.83 $\frac{1}{2}$  W.15 poles to a maple, chestnut and spotted oak on top of a ridge, thence



with the top thereof N.41 $\frac{1}{2}$  W.5 $\frac{3}{4}$  poles, N.47 W.12 $\frac{1}{2}$  poles, N.39 W.8 poles, N.30 $\frac{1}{2}$  W.11 $\frac{1}{2}$  poles to a chestnut on the top of said ridge, N.69 $\frac{1}{2}$  W.13 poles to a dead oak, S.84 $\frac{1}{2}$  W.6 $\frac{1}{2}$  poles to a maple, S.48 $\frac{1}{2}$  W.12 $\frac{1}{2}$  poles to a chestnut oak on the top of a ridge, N.70 $\frac{3}{4}$  W.25 $\frac{3}{4}$  to a double chestnut (John L. Pennington's corner), thence continuing with the top of said ridge S.36 W.10 poles, S.76 W.6 $\frac{1}{2}$  poles, N.70 $\frac{1}{2}$  W.16 $\frac{1}{2}$  poles, S.88 $\frac{1}{2}$  W.25 $\frac{1}{2}$  poles, N.50 W.25 $\frac{3}{4}$  poles, N.38 W.10 poles, N.56 E.6 $\frac{1}{2}$  poles, N.78 E.27 poles, N.33 E.7 $\frac{1}{2}$  poles to a white oak, N.69 E.12 $\frac{1}{2}$  poles, S.68 E.8 $\frac{3}{4}$  poles, N.79 $\frac{1}{2}$  E.10 poles, S.73 $\frac{1}{2}$  E.26 poles, thence leaving the top of ridge N.20 $\frac{1}{2}$  E.24 $\frac{1}{2}$  poles to a white oak, poplar, birch and sassafras on the west bank of Puckets creek, thence up same as it meanders N.74 W.8 poles, N.63 $\frac{1}{2}$  W.23 $\frac{1}{2}$  poles, N.50 $\frac{1}{2}$  W.17 poles, N.38 $\frac{1}{2}$  W.13 $\frac{1}{4}$  poles to a coal bank in said branch, N.52 $\frac{1}{4}$  W.5 poles, N.44 W.4 $\frac{1}{2}$  poles, to a beech, thence leaving said creek and with a marked line up a haul road, N.58 $\frac{1}{4}$  W.5 $\frac{1}{2}$  poles, N.48 $\frac{1}{2}$  W.12 $\frac{1}{2}$  poles, N.63 $\frac{1}{2}$  W.5 poles, N.48 $\frac{1}{2}$  W.13 $\frac{1}{2}$  poles, N.58 W.10 poles, N.51 $\frac{3}{4}$  W.14 $\frac{1}{2}$  poles, N.49 W.9 $\frac{1}{2}$  poles, N.52 $\frac{1}{2}$  W.19 $\frac{3}{4}$  poles to a maple on the west side of said creek N.38 $\frac{3}{4}$  W.141 poles to a salt-petre cave, N.17 W.40 poles to the top of Little Black mountain, and with the top of same, S.78 W.27 poles, S.52 $\frac{1}{2}$  W.19 $\frac{1}{2}$  poles to a chestnut on top of said mountain, S.15 W.19 poles, S.22 W.27 poles to a hickory, black and large rock, S.12 $\frac{1}{4}$  E.13 poles S.10 W.14 $\frac{1}{2}$  poles, S.4 $\frac{1}{2}$  E.16 $\frac{1}{4}$  poles, S.36 W.4 $\frac{1}{2}$  poles, S.7 W.29 poles to a water oak marked with old marks, thence leaving the top of said mountain with old marked line S.69 $\frac{3}{4}$  E.76 poles to two chestnutx oaks on top of a spur, S.53 $\frac{1}{2}$  W.49 poles to pointers, chestnut and chestnut oak, thence with original west line S.38 E.214 poles to a stake on the southwest side of a branch on the North edge of Loyd Garrett's garden, S.67 E.30 poles to a black gum, S.28 E.25 poles to a white oak stump near a grave yard, S.16 E.22 poles to a beech, dogwood and maple at the head of Ely's creek, and with the same as it meanders S.5 $\frac{1}{2}$  W.14 $\frac{1}{2}$  poles, S.15 $\frac{1}{2}$  W.28 poles, S.39 W.18 $\frac{3}{4}$  poles, S.18 $\frac{1}{2}$  W.15 poles, S.27 W.25 poles, S.10 $\frac{1}{2}$  E.19 $\frac{1}{2}$  poles, S.31 $\frac{3}{4}$  E.16 $\frac{1}{4}$  poles, S.23 $\frac{1}{2}$  E.22 $\frac{3}{4}$  poles, S.38 E.14 poles, S.3 $\frac{3}{4}$  E.8 poles, S.36 E.22 poles, S.28 $\frac{3}{4}$  E.11 $\frac{1}{4}$  poles to a stake in forks of Elys creek, thence leaving original line



N.82 E.145 poles to a chestnut oak and stake on top of a ridge and with same S.14 $\frac{1}{2}$  E.5 poles, S.12 W.12 $\frac{3}{4}$  poles, S.17 $\frac{1}{2}$  E.14 $\frac{1}{4}$  poles, S.42 $\frac{1}{2}$  E.7 $\frac{1}{2}$  poles, S.68 E.4 $\frac{1}{2}$  poles to a maple, N.77 $\frac{1}{4}$  E.7 poles to a stake on the Wynn line and with same N. 23 E. 28 poles to pointers, white oak on the North and poplar on the south side of Lick branch) N.76 $\frac{3}{4}$  E. 152 poles to a cucumber, thence with original line N.40 $\frac{1}{2}$  W. 118 poles, N.39 E.96 poles to the top of a spur or ridge, and with the same N.30 $\frac{1}{2}$  W.9 $\frac{1}{2}$  poles, N.43 W.14 $\frac{3}{4}$  poles to the beginning, and containing eight hundred and twenty-four acres.

The second or last of said tracts of land being a portion of the Mourning Andes dower land and was conveyed to said Wm. Pennington by John Z. Ely et al and is bounded as follows, to-wit: Beginning at two white oaks on the west side of Puckett's creek, thence with original line S.50 W.50 poles to pointers, S.22 $\frac{1}{2}$  E.140 poles to a stake and pointers in a hollow, thence leaving original line, N.57 $\frac{3}{4}$  E.11 poles to a beech on the west bank of public road, S.86 $\frac{1}{2}$  E.7 poles to a buckeye on the west bank of Straight creek, S.64 E.18 poles to a black walnut N.27 $\frac{1}{2}$  E.34 poles to a black oak on the north side of said creek, a corner to Salam church lot, thence with the meanders of said creek N.60 E.10 poles, East 12 poles, opposite a black walnut thence leaving said creek N.28 $\frac{3}{4}$  E.64 poles to a stake and pointers on top of a large rock which is on top of Lone mountain, thence nearly with the top of same N.51 $\frac{1}{4}$  E.60 $\frac{1}{2}$  poles, N.37 E.25 poles to a black gum, N.20 E. 42 $\frac{1}{2}$  poles to a stake near an old marked corner, red oak two black oaks and a sourwood, N.24 W.8 $\frac{1}{4}$  poles to a white oak, N. 16 $\frac{1}{4}$  W.26 $\frac{1}{2}$  poles to a burnt chestnut, N. 18 E. 20 $\frac{1}{2}$  poles to a stake, N.27 $\frac{1}{2}$  E.20 poles to two maples and black gum (John L. Pennington's corner), thence leaving the top of said mountain S.71 W. 103 poles to a red oak and white oak on the top of a spur or ridge, thence with the top thereof N.38 $\frac{1}{2}$  W. 20 $\frac{1}{2}$  poles, N.51 $\frac{1}{4}$  W.37 $\frac{3}{4}$  poles, N.22 $\frac{1}{2}$  W.7 $\frac{1}{2}$  poles to four sourwoods, a hickory and cucumber on a point, S.89 W. 6 $\frac{1}{2}$  poles, S.78 $\frac{1}{2}$  W.19 poles to a black gum on a line of the McCredie survey and with the same S. 31 degrees 5 minutes E.63 poles to a poplar, S.17 W.21 poles to the beginning, and containing one hundred



and seventy acres.

To have and to hold said two tracts or parcels of land subject to the rights of said Stratton therein unto said Mallett and his heirs forever.

And the said Wm. Pennington and Barbary J. his wife, for themselves their heirs and assigns, covenant with the said Mallett, his heirs and assigns, that they are seized in fee simple of said two tracts of land, that they have lawful right and power to convey the same in fee simple to said Mallett, that the said Mallett, his heirs and assigns, shall have quiet and peaceable possession of said lands with their appurtenances forever, that the said two tracts of land are free from all incumbrances and charges whatsoever, except the rights of said Stratton therein; that if they desire to sell the remainder of the Day tract of land they now own they will first offer the same to said Mallett before selling to any other person, and if said Mallett will give as much per acre as any person, then they will let said Mallett have the same; that they will not keep or maintain any grocery, that is, liquors, nor sell or make any intoxicating liquors nor permit the same to be done by another on any of their lands adjoining the two tracts herein conveyed, that they will execute such further assurances of title as may be necessary to make sure and complete the title of said second party, and that they will forever warrant generally the title to said lands.

Said Wm. Pennington reserves his vendor's lien on said lands until the whole of said deferred payments are made.

Witness the following signatures and seals the day and year first above written.

William Pennington, (Seal.)

Barbara J. Pennington, (Seal.)

Virginia, Lee County, to-wit:

I, E. W. Pennington, a Notary Public for the county aforesaid and State of Virginia, do certify that Wm. Pennington and Barbary J. Pennington, his wife, whose names are signed to the writing above bearing date on the 10th day of October, 1891, have acknowledged the same



before me in my county aforesaid.

Given under my hand this the 28th day of October, 1891.

E. W. Pennington, J.P.

Virginia, Lee County, to-wit:

In the office of the clerk of the said county the 5th day of April, 1892, this deed was presented and together with the certificate thereto annexed admitted to record.

Teste: John R. Gibson, Clerk.

A copy, Teste: B. M. Morgan, Clerk.

(D.B. 27 p.448 &c.)



~~~~~  
Wm Pennington
vs. { In Chancery.
Chas. E. Mallett, et al.
~~~~~

"Exhibit No. 1."

~~~~~  
Wm Pennington,
Pl { et al.
vs { Deed.
Chas. E. Mallett.
~~~~~



T H I S I N D E N T U R E made this 17th day of December, 1891, between CHARLES E. MALLET, of Brooklyn, New York, and Ida Beach MALLET, his wife, parties of the first part, and the POCKET COMPANY, a corporation of the State of Kentucky, party of the second part,

W I T N E S S E T H , that in consideration of the sum of one dollar to them in hand paid and other valuable considerations, the parties of the first part have bargained and sold, and by these presents do grant and convey unto the party of the second part, ALL the right, title and interest of the parties of the first part in and to six certain tracts or parcels of land situate in the district known as the Pocket, in the County of Lee and State of Virginia, and being the same premises conveyed to said Charles E. Mallett by John L. Pennington and Fannie E. Pennington, his wife, by deed dated August 26, 1891, and recorded in the Office of the clerk of the said County of Lee, September 2, 1891, in Deed Book No. 27, at page 217, which said tracts of land contain in the aggregate about 1165 acres and are respectively described in the said deed as follows:

I. A tract of land conveyed to John L. Pennington by William Kirk and wife September 26, 1889, by deed recorded in Lee County in Deed Book 25, page 467:

Beginning on a poplar a corner of the McCrudy survey, thence with a line of the same S. 31 E. 123 poles to a Lynn in said survey S. 58 $\frac{1}{2}$  W. 13 $\frac{1}{2}$  poles to the top of Bradley's ridge N. 61 $\frac{1}{2}$  W. 12 $\frac{3}{4}$  poles with the top of said ridge as it meanders N. 32 $\frac{1}{2}$  W. 18 poles, N. 46 $\frac{1}{2}$  W. 6 poles, N 50 W. 10 poles, N. 9 $\frac{1}{2}$  W. 21 $\frac{3}{4}$  poles, N. 51 W. 7 $\frac{1}{2}$  poles, N. 66 $\frac{1}{2}$  W. 13 $\frac{1}{2}$  poles, N. 32 W. 3 $\frac{1}{2}$  poles, N. 57 $\frac{1}{2}$  W. 16 $\frac{1}{2}$  poles to a gum, N. 65 W. 11 poles to a red oak bush, N. 12 W. 18 $\frac{1}{2}$  poles to a black oak bush, N. 8 W. 25 poles to two gums, N. 36 E. 15 $\frac{1}{2}$  poles to two chestnuts, N. 15 E. 10 poles, N. 20 W. 11 poles to black oaks, N. 18 $\frac{1}{2}$  E. 19 poles to a chestnut, N. 18 W. 7 poles to a point opposite poplar first mentioned, thence with Wm. Pennington's line to the beginning, and containing forty-seven and one half acres.

2. A tract of land conveyed to John L. Pennington by James D.



Pennington January , 1889, by deed recorded in Lee County in Deed Book 26, page 462:

Beginning on a poplar on the head of the right hand fork of Puckets creek at the upper end of a field known as the Joel Alsop field, thence running a southeast course square up this ridge to the top of the ridge, thence a north course with the top of the ridge to the top of Bradley's ridge and Jemima Garrett's line to the top of Little Black Mountain and the Kentucky line, thence a west direction with the top of said mountain and said Kentucky line to opposite the Salt Peter Cave, thence down the Mountain with S.C.Russell's line to a large maple at the foot of the Mountain, thence down a small ridge with said Russell's line ( a marked line) to a large coal bank at the forks of the branch, to a spring known as the Joel Alsop Spring, to a chestnut maple and sassafras, all marked, thence southward a straight line across a ridge and hollow to the top of another ridge to three large chestnuts below what is known as the chestnut house, thence with the crest of said ridge, a marked line, an eastward direction to the upper end of the field heretofore mentioned, thence down the ridge to a large beech at the branch marked, thence down the branch about one hundred yards to the beginning, and supposed to contain four hundred and eight acres.

3. A tract of land conveyed to John L. Pennington by G.W. Russell November 15, 1888, by deed recorded in Lee County in Deed Book 24, page 173, and by A.M. Goins, Com'r., April 5, 1889, by deed recorded in Lee County in Deed Book 24, page 174:

Beginning at a white oak, sourwood and dogwood on the N.W. bank of Straight creek corner to Mourning Andes dower and with a line of the same N.84 E.8 poles to the creek, thence up and with the meanderings of the creek N.47 E. 39 poles N.58 E. 18 poles, N. 29 E. 5 poles, N. 13 W. 23 poles to a corner of G.W. Peters land in said creek, with two spruce pines standing on the west bank marked as pointers and as a fore and aft, thence up a spur of a ridge N 78 $\frac{1}{2}$  W. 4 poles to a white oak and service bush on the top of said spur, and with the top and meanders of said ridge N.45 W.14 poles to a double black oak N.16 $\frac{1}{2}$  W.



73 poles to a chestnut oak on the top of said ridge, N. 45 W. 50 poles to a chestnut, marked as a pointer, N.  $34\frac{3}{4}$  W.  $11\frac{1}{2}$  poles to a large black oak and two black oak saplings S 50 W 180 poles to a poplar on Bradley's ridge and corner in the line of the McCrudy survey, S. 65 E. 190 poles to the beginning, and containing one hundred and eleven acres.

4. Part of a tract of land conveyed to John L. Pennington by William Pennington July 1, 1884, by deed recorded in Lee County in Deed Book 20, page 526:

Beginning on the top of Lone Mountain at two maples, a black gum and white oak (marked with a knife), thence running a straight line from the top of said mountain crossing Straight creek to the top of Bradley's ridge southwestwardly to a Spanish and white oak near the top of the said ridge, thence with the top of said ridge and near a small mound on the top thereof to five sourwoods, a hickory, red oak and wahoo, thence northwestwardly to a black gum near the McCrudy line on top of a spur of said ridge (eastwardly of Cris. Kirk's field), thence running with said McCrudy line north to a poplar on McCrudy line and corner to Mourning Andes dower line, thence N. 50 E. 180 poles to a large black oak and two black oak saplings, S.  $34\frac{3}{4}$  E.  $11\frac{1}{2}$  poles to a chestnut, S. 45 E. 50 poles to a chestnut on the top of a spur of Bradley's ridge, S.  $16\frac{1}{2}$  E. 73 poles to a double black oak S. 45 E. 14 poles to a white oak and service~~x~~ bush on the top of said spur, S.  $75\frac{1}{2}$  W. 4 poles to a corner of G.W. Peter's land to two spruce pines one on the west and the other on the east bank of Straight creek, thence down said creek about 20 poles to a spruce pine on the east bank of said creek, thence a straight line to the top the ridge to H.A.L. Maness' corner, thence southeastwardly with the meanderings of said ridge to two black oaks near a grave yard, thence eastwardly some ten poles to a large rock, thence with said Maness' line crossing a hollow to a large hickory on the top of a ridge, thence with said Maness' line and up said ridge to the top of Lone mountain and to Mourning Andes dower line, thence down said mountain and with said dower line to the beginning, containing three hundred and twenty acres.



A small portion of last described tract, thirteen and three fourths acres, was deeded to said John L. Pennington by E. L. Parsons by deed bearing date June 26th, 1889, which deed is recorded in deed book 24, page 174.

5. A tract of land conveyed to John L. Pennington by William Pennington February 1, 1890, by deed recorded in Lee County in Deed Book 25, page 464:

Beginning on a poplar in the McCrudy line, thence S. 38 W. 146 poles, N. 41 W.  $13\frac{1}{2}$  poles, N. 28 W. 11 poles, N.  $3\frac{1}{2}$  E. 24 poles, N. 21 W. 30 poles, N.  $12\frac{1}{2}$  E. 19 poles, N.  $4\frac{1}{2}$  W. 10 poles, N. 22 E. 19 poles, N.  $32\frac{1}{2}$  W. 16 poles, N.  $47\frac{1}{2}$  W. 35 poles, N.  $13\frac{1}{2}$  E. 19 poles, N.  $44\frac{1}{2}$  W. 28 poles, north 34 poles, N. 26 W. 29 poles, N. 51 W.  $12\frac{1}{2}$  poles, N. 86 W. 16 poles, N. 27 W. 29 poles, N. 63 W. 20 poles to a small chestnut and three oaks, N. 47 E. 26 poles, N.  $69\frac{1}{2}$  E. 14 poles, N.  $49\frac{1}{2}$  E. 16 poles, S.  $82\frac{1}{2}$  E.  $12\frac{1}{2}$  poles, S. 31 E. 14 poles, S.  $53\frac{1}{4}$  E. 8 poles, S.  $45\frac{1}{2}$  E.  $14\frac{1}{2}$  poles, S. 76 E.  $13\frac{1}{2}$  poles, S.  $69\frac{1}{2}$  E. 27 poles, N.  $36\frac{1}{2}$  E.  $8\frac{1}{2}$  poles, N.  $46\frac{1}{2}$  E. 20 poles, S.  $86\frac{1}{2}$  E. 36 poles to a chestnut on a high point, S.  $61\frac{1}{2}$  E. 10 poles, S.  $20\frac{1}{2}$  E. 18 poles, S. 77 E. 38 poles, to a stake in the McCrudy line, thence S.  $3\frac{1}{4}$  W. 166 poles to the beginning, and containing two hundred and fifty two acres.

6. A tract of land conveyed to John L. Pennington by Gilbert Thompson:

Beginning at three large chestnuts on the top of a ridge, thence northwestwardly with the meanderings of said ridge to the head of the Chestnut House hollow and to Wm. Kirk's corner, thence down a ridge and with said Kirk's line to a beech, thence a straight line to the beginning, and containing fourteen and one-half acres.

AND ALSO two certain tracts of land situate in Lee County, in the State of Virginia, in the Pocket Country, and being the same premises conveyed to said C. E. Mallett by William Pennington and Barbara J., his wife, by deed dated October 10, 1891, and which said last mentioned tracts are severally bounded and described as follows:

I. A tract of land conveyed by D. S. Dickinson, Benj. D. Martin and M. B. D. Lane, Comr. & c., to said William Pennington:



Beginning at a small red oak on the top of the dividing ridge between Big branch and Coal Bank branch, thence with the top of said ridge N.  $24\frac{1}{2}$  W.  $11\frac{1}{2}$  poles to a chestnut, N.  $3\frac{1}{2}$  E  $21\frac{3}{4}$  poles to a small red oak bush N. 21 W. 28 poles, N.  $12\frac{1}{2}$  E.  $16\frac{3}{4}$  poles, N. 4 W. 10 poles, N. 22 E.  $19\frac{1}{2}$  poles, N.  $32\frac{1}{2}$  W.  $17\frac{1}{2}$  poles, N.  $49\frac{1}{2}$  W.  $30\frac{1}{2}$  poles to a hickory on the top of said ridge, thence leaving the top of said ridge and with the top of another spur or ridge N. 34 W.  $4\frac{3}{4}$  poles to a black gum N.  $89\frac{1}{4}$  W. 20 poles to a black gum and white oak, S. 47 W. 10 poles to a red oak, S. 25 W.  $11\frac{3}{4}$  poles to a chestnut, S.  $7\frac{1}{2}$  W. 22 poles to a double chestnut, S.  $3\frac{1}{2}$  W. 40 poles to a red oak, thence leaving the top of said ridge S. 81 W. 33 poles to a polar on the west side of Coal Bank branch, N.  $79\frac{1}{4}$  W. 20 poles to a beech on the west side of Pucket's creek, S. 62 W. 22 poles to a dogwood on a ridge, N.  $83\frac{1}{2}$  W. 15 poles to a maple, chestnut and spotted oak on top of a ridge, thence with the top thereof N.  $41\frac{1}{2}$  W.  $5\frac{3}{4}$  poles, N. 47 W.  $12\frac{1}{2}$  poles, N. 39 W. 8 poles, N.  $30\frac{1}{2}$  W.  $11\frac{1}{2}$  poles to a chestnut on the top of said ridge, N.  $69\frac{1}{2}$  W. 13 poles to a dead oak, S.  $84\frac{1}{2}$  W.  $6\frac{1}{2}$  poles to a maple, S.  $48\frac{1}{2}$  W.  $12\frac{1}{4}$  poles to a chestnut oak on top of a ridge, N.  $70\frac{3}{4}$  W.  $25\frac{3}{4}$  poles to a double chestnut (John L. Pennington's corner), thence continuing with the top of a ridge, S. 36 W. 10 poles, S. 76 W.  $6\frac{1}{2}$  poles, N.  $70\frac{1}{2}$  W.  $16\frac{1}{2}$  poles, S.  $88\frac{1}{2}$  W.  $25\frac{1}{2}$  poles, N. 50 W.  $25\frac{3}{4}$  poles, N. 38 W. 10 poles, N. 56 E.  $6\frac{1}{2}$  poles, N. 78 E. 27 poles, N. 33 E.  $7\frac{1}{2}$  poles to a white oak, N. 69 E.  $12\frac{1}{2}$  poles, S. 68 E.  $8\frac{3}{4}$  poles, N.  $79\frac{1}{2}$  E. 10 poles, S.  $73\frac{1}{2}$  E. 26 poles, thence leaving the top of ridge N.  $20\frac{1}{4}$  E.  $24\frac{1}{2}$  poles to a white oak, poplar, birch and sassafras on the west bank of Pucket's creek, thence up same as it meanders N. 74 W. 8 poles, N.  $63\frac{1}{4}$  W.  $23\frac{1}{2}$  poles, N.  $50\frac{1}{2}$  W. 17 poles, N.  $38\frac{1}{2}$  W.  $13\frac{1}{4}$  poles to a coal bank in said branch, N.  $52\frac{1}{2}$  W. 5 poles, N. 44 W.  $4\frac{1}{2}$  poles to a beech, thence leaving said creek and with a marked line up a haul road, N.  $58\frac{1}{4}$  W.  $5\frac{1}{2}$  poles, N.  $48\frac{1}{2}$  W.  $12\frac{1}{2}$  poles, N.  $63\frac{1}{2}$  W. 5 poles, N.  $48\frac{1}{2}$  W.  $13\frac{1}{2}$  poles, N. 58 W. 10 poles, N.  $51\frac{3}{4}$  W.  $14\frac{1}{2}$  poles, N. 49 W.  $9\frac{1}{2}$  poles, N.  $52\frac{1}{2}$  W.  $19\frac{3}{4}$  poles to a maple on the west side of said creek, N.  $38\frac{3}{4}$  W. 141 poles to the sale petre cave, N. 17 W. 40 poles to the top of the Little Black mountain and with the top of same S. 78 W. 27 poles, S.  $52\frac{1}{2}$  W.  $19\frac{1}{2}$  poles to a chestnut on top of said mountain, S. 15 W. 19 poles, S. 22 W.



27 poles to a hickory block and large rock, S.  $12\frac{1}{2}$  E. 13 poles, S. 10 W.  $14\frac{1}{2}$  poles, S.  $4\frac{1}{2}$  E.  $26\frac{1}{2}$  poles, S. 36 W.  $4\frac{1}{2}$  poles, S. 7 W. 29 poles, to a water oak marked with old marks, thence leaving the top of said mountain with old marked line S.  $69\frac{3}{4}$  E. 76 poles to two chestnut oaks on top of a spur, S.  $53\frac{1}{2}$  W. 49 poles to pointers, chestnut and chestnut oak, thence with original west line S. 38 E. 214 poles to a stake on the southwest side of a branch and on the north edge of Loyd Garrett's graden, S. 67 E. 30 poles to a black gum, S. 28 E. 25 poles to a white oak stump near a grave yard, S. 16 E. 22 poles to a beech, dogwood and maple at the head of Ely's creek, and with the same as it meanders S.  $5\frac{1}{2}$  W.  $14\frac{1}{2}$  poles, S.  $15\frac{1}{2}$  W. 28 poles, S. 39 W.  $18\frac{3}{4}$  poles, S.  $18\frac{1}{2}$  W. 15 poles, S. 27 W. 25 poles, S.  $10\frac{1}{2}$  E.  $19\frac{1}{2}$  poles, S.  $31\frac{3}{4}$  E.  $16\frac{1}{2}$  poles, S.  $23\frac{1}{2}$  E.  $22\frac{3}{4}$  poles, S. 38 E. 14 poles, S.  $3\frac{3}{4}$  E. 8 poles, S. 36 E. 22 poles, S.  $28\frac{3}{4}$  E.  $11\frac{1}{2}$  poles to a stake in forks of Ely's creek, thence leaving original line N. 82 E. 145 poles to a chestnut oak and stake on top of ridge and with same, S.  $14\frac{1}{2}$  E. 5 poles, S. 12 W.  $12\frac{3}{4}$  poles, S.  $17\frac{1}{2}$  E.  $14\frac{1}{2}$  poles, S.  $42\frac{1}{2}$  E.  $7\frac{1}{2}$  poles, S. 68 E.  $4\frac{1}{2}$  poles to a maple, N.  $77\frac{1}{2}$  E. 7 poles to a stake on the Wynn line and with same, N. 23 E. 28 poles to pointers (white oak on the north and poplar on the south side of Lick branch) N.  $76\frac{3}{4}$  E. 152 poles to a cucumber, thence with original line N.  $40\frac{1}{2}$  W. 118 poles, N. 39 E. 96 poles to the top of a spur or ridge and with the same, N.  $30\frac{1}{2}$  W.  $9\frac{1}{2}$  poles, N. 43 W.  $14\frac{3}{4}$  poles to the beginning, and containing eight hundred and twenty-four acres.

2. A tract of land being a portion of the Mourning Andes dower land conveyed to William Pennington by John Z. Ely and others:

Beginning at two white oaks on the west side of Puckett's creek, thence with original line S. 50 W. 50 poles to pointers, S.  $22\frac{1}{2}$  E. 140 poles to a stake and pointers in a hollow, thence leaving original line N.  $57\frac{3}{4}$  E. 11 poles to a beech on the west side of public road, S.  $86\frac{1}{2}$  E. 7 poles to a buckeye on the west bank of Straight creek, S. 64 E. 18 poles to a black walnut, N.  $27\frac{1}{2}$  E. 34 poles to a black oak on the north side of said creek a corner to Slaem church lot, thence with the meanders of said creek, N. 60 E. 10 poles, East 12 poles opposite a black walnut, thence leaving said creek N.  $28\frac{3}{4}$  E. 64 poles to a stake



and pointers on top of a large rock which is on top of Lone Mountain, thence nearly with the top of same N.51 $\frac{1}{2}$  E.60 $\frac{1}{2}$  poles, N.37 E.25 poles, to a black gum, N.20 E.42 $\frac{1}{2}$  poles to a stake near an old marked corner, red oak, two black oaks and a sourwood, N.24 W.8 $\frac{1}{2}$  poles to a white oak, N.16 $\frac{1}{2}$  W.26 $\frac{1}{2}$  poles to a burnt chestnut, N.18 E.20 $\frac{1}{2}$  poles to a stake, N.27 $\frac{1}{2}$  E.20 poles to two maples and black gum (John L. Pennington's corner), thence leaving the top of said mountain S.71 W.103 poles to a red oak and white oak on the top of a spur or ridge, thence with the top thereof N.38 $\frac{1}{2}$  W.20 $\frac{1}{2}$  poles, N.51 $\frac{1}{2}$  W.37 $\frac{3}{4}$  poles, N.22 $\frac{1}{2}$  W.7 $\frac{1}{2}$  poles to four sourwoods, a hickory and cucumber on a point, S.89 W.6 $\frac{1}{2}$  poles, S.78 $\frac{1}{2}$  W.19 poles to a black gum on a line of the McCredia survey and with the same S.31 degrees 5 minutes E.63 poles to a poplar, S.17 W. 21 poles to the beginning, and containing one hundred and seventy acres.

TO HAVE AND TO HOLD, with the appurtenances thereunto belonging unto the party of the second part, its successors and assigns forever, subject to all the existing liens thereon for unpaid purchase money due to the respective vendor's above mentioned, and to all other liens and incumbrances.

IN WITNESS WHEREOF the parties of the first part have hereunto set their hands and seals the day and year first above written.

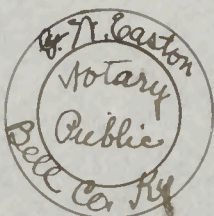
Charles E. Mallett

Ida Beach Mallett

State of Kentucky     )  
                              ) to wit:  
County of Bell,        )

I, G.W. Easton, a Notary Public for the County aforesaid, in the State of Kentucky do certify that Charles E. Mallett, whose name is signed to the writing above, bearing date on the 17th day of December, 1891, has acknowledged the same before me in my County aforesaid.

Given under my hand and official seal the 27th day of  
January, 1892.



G. W. Easton,

Notary Public.

State of Georgia     )

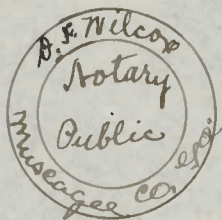


) to wit:

County of Muscogee )

I, D.F. Wilcox, a Notary Public for the County aforesaid, in the State of Georgia do certify that Ida Beach Mallett, wife of Charles E. Mallett, whose name is signed to the writing above, bearing date on the 17th day of December, 1891, has acknowledged the same before me in my county aforesaid.

GIVEN under my hand and official seal the 4th day of Feb'y, 1892.



D. F. Wilcox,

Notary Public.

Virginia, Lee County, to-wit:

In the office of the clerk of the County Court for said county, the 21<sup>st</sup> day of November, 1902. This deed was presented and, together with the certificate thereto annexed, admitted to record. <sup>of acknowledgment</sup>  
at 12 o'clock m.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B.No. 39, page 379tc)



~~~~~  
Wm Pennington
vs { In Chancery
Chas. E. Mallett, et al.
~~~~~

"Exhibit No. 2".

~~~~~  
Chas E. Mallett, et ux
To { Deed
Pocket Company.
~~~~~



WILLIAM PENNINGTON,

vs. (In Chancery.)

CHAS. E. MALLETT, et al.

TRANSCRIPT OF THE RECORD, for EXHIBIT in

CASE OF

WILLIAM PENNINGTON vs. Chas. E. MALLETT, et al. Chancery Attachment.



1893, is due and unpaid to your orator; that when your orator conveyed said lands to ~~xxx~~ said Mallett, on the face of the deed of conveyance he reserved a lien upon the lands so conveyed to secure the unpaid purchase money and interest to accrue thereon. A copy of which deed is here filed, marked "Deed" and prayed to be taken as a part of this bill of complaint.

Your orator will further show unto your honor, that the said Chas.E.Mallett is a non-resident of this state; that the said Pocket Company is a corporation created by the laws of the state of Kentucky but has no officer or agent <sup>within</sup> in this state or county on whom process may be served.

The premises considered, your orator is advised that he has vendor's lien and he here avers the only lien upon said lands described in said copy of said deed; that his lien is capable only of being enforced in a court of equity; his prayer therefore is that your honor take cognizance of his cause of complaint, that he be declared to have a vendor's lien upon said lands for the amount of the unpaid purchase money due thereon with its interest; that said lands, or enough thereof to satisfy said lien and the costs of this suit be directed to be sold by your honor; that said Chas.E.Mallett and the said Pocket Company be made parties defendant to this bill of complaint, and that they be required to answer the same, but they need not do so on oath, that being expressly waived, that an order of publication be duly made against said defendants as the law requires in such cases. And that on a final hearing of the cause all general, and special relief be granted your orator that the nature of his case may require to have justice <sup>2</sup>metedout to him, May process issue etc. And your orator will ever pray etc.

E. W. Pennington Wtty for pl.

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Virginia, Lee County, to-wit:

This day Jas.D.Pennington personally appeared before me, a notary public in and for the county and state aforesaid, and made oath that Chas.E.Mallett and the Pocket Company against whom William Pennington



William Pennington vs. Chas.E.Mallett et al.

---- TRANSCRIPT OF RECORD.-----

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Virginia,

Pleas before the circuit court of the county of Lee, at the court-house thereof, on Tuesday, the 8th day of July, 1902:

Be it remembered that heretofore, to-wit: at rules held in the clerk's office of the said court on Monday, the \_\_\_\_ day of February, 1897, came William Pennington, by his counsel, and filed his bill in chancery against Chas.E.Mallett and the Pocket Company, a corporation, which bill is in the words and figures following, to-wit:

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Bill.  
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To the Hon.W.T.Miller, Judge of the Circuit Court for Lee County:--

Humbly complaining, your orator, Wm.Pennington, a citizen of Lee County, Virginia, would respectfully represent unto your honor That on the 10th day of October, 1891, he sold, conveyed and delivered to one Chas.E.Mallett, to certain tracts or parcels of land lying and being in Lee County, in the Pocket Country, --one of the ~~said~~ tracts containing 824 acres at the price of \$15.00 per acre, and the other containing 170 acres at the price of \$25.00 per acre, or the sum of \$16610.00 for both tracts; that by the terms of sale which is expressed in the deed made, said Mallett paid down to your orator on the purchase price of said land the sum of \$500.00, and was to pay on Jan. 1st, 1892, \$500.00 more, and the residue with interest from the 10th day of Oct., 1891, (the interest, payable semi-annually, beginning with April 10th, 1892) payable on or before Oct., 10th, 1896; that said Mallett or his assignee paid to your orator the \$500.00 to be paid on Jan.the 1st, 1892, and also the first two years interest.

Your orator will ~~farther~~ show unto your honor, that said Mallett by deed conveyed said lands to the Pocket Company, a corporation organized under the laws of Kentucky; that \$15510.00 of the purchase price of said lands with interest thereon from the 10th day of Oct;



is about to bring suit in the circuit court for Lee county, on the chancery side thereof, are non-residents of this Commonwealth.

Given under my hand this the 26th day of June, 1896.

A. G. Hyatt, N.P.

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Note.--At the request of L.T.Hyatt, counsel for plaintiff, who tells me this transcript is intended to be used as an exhibit with a chancery suit entitled Wm.Pennington vs.Chas.E.Mallett et al."and that he has filed in the same as an exhibit with his bill a copy of the deed amrked "Deed" with the foregoing bill, I have not copied the same in this transcript.

A.B. Munsey, Clerk.  
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And the defendants having been proceeded against by orders or piblication and by publication of process in the manner required by law, and not appearing, on motion of the said plaintiff, by his attorneys, it is ordered that unless they do appear here at rules to be held on the third Monday in February, 1897, and answer, demur, or plead to the said bill, the same will be taken for confessed and the court will decree accordingly.

At which day, to-wit: at rules held in the clerk's office of the said court on Monday, the \_\_\_\_ day of February, 1896, the defendants still failing to appear to answer, plead or demur to the said bill, it is ordered that the same be taken for confessed against them, and on motion of the plaintiff's counsel, the cause is set for hearing at the next term.

And at another day, to-wit:

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Decree No.1.  
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Virginia,

At a circuit court continued and held for Lee county, at the court-house thereon, on \_\_\_\_\_, the 4th day of March, 1897.

William Pennington, . . . . . Complt.

vs.

In Chancery.

Chas.E.Mallett, et al. . . . . . Defts.

This cause came on this day to be heard upon the bill of



the complainant and exhibits filed therewith, the petition of Cowan, McClung, & Co. ~~setting~~ setting out that they were interested in the money due said complainant from said Mallett by reason of an assignment made to them on May 3rd, 1895, and they <sup>a</sup>prying to be made parties to said bill, leave was granted to said complainant to amend his bill making said Cowan, McClung & Co. parties thereto, which by consent of counsel for plaintiff and counsel for Cowan, McClung & Co. was done; and thereupon said Cowan, McClung & Co. filed their answer to said bill to which answer the complainant replied generally. And from the pleadings in said cause, it appears that the defendant Chas. E. Mallett is a non-resident of this State and that the Pocket Company is a foreign corporation and it has no officer or agent within the State on whom process could have been served, and it further appearing to the court that an order of publication has been made, posted and published in a newspaper published in Lee County Virginia for four successive weeks prior to 15 days before the first day of this term of the court, and that a copy of the process in this cause against the said Pocket Company has been made, posted and published in a newspaper published in the town of Jonesville, Lee Co., Va., for four successive weeks prior to 15 days before the first day of this term of the court, and said Mallett and said Pocket Company failing to appear, plead or demur, on motion of said complainant, said bill with its amendments are taken for confessed as to them. On consideration of all which and for reasons appearing to the court it is adjudged ordered and decreed that said Cowan, McClung & Co., as assignee of said complainant, have a first lien on the lands in the bill and proceedings mentioned for the sum of \$1974.46, due May 4th, 1895, subject to a credit of \$110.22 Dec. 21st, 1895, the sum of \$241.66 due August 7th, 1895, and the sum of \$301.84 due Oct. 7th, 1895, and that Wm. Pennington, said complainant has a second lien on said land for the sum of \$14585.70, with interest thereon from the 10th day of Oct, 1895, till paid; and it is further adjudged, ordered and decreed that said Cowan, McClung & Co., as assignees of said complainant, recover from said Chas. E. Mallett the sum of Two Thousand five hundred and sev-



enteen dollars and ninty-six cents, with legal interest on \$1974.46, a part thereof from May 4th, 1895, till paid, subject to a credit of \$110.22 as of Dec.21st, 1895, with legal interest on \$241.66 another part thereof, from August 7th, 1895, till paid, and with legal interest on \$301.84, the residue of said sum of \$2517.96, from October 7th, 1895, till paid; and that said complainant recover from the said Chas.E.Mallett the sum of \$14585.70, with interest thereon from the 10th day of October, 1895, till paid, and the costs of this suit; and if said sums of money be not paid within thirty days from this date, then E W.Pennington, who is hereby appointed a specialfor the purpose will after advertising the time terms and place of sale by written or printed notices posted at the front door of the court-house of this county, at the post-office in the town of Pennington Gap, in the neighborhood of said lands and at such other places as he may deem proper, for 30 days, expose said lands for sale or enough thereof to pay said sum of money, to the highest and bestbidder, at the front door of the court-house of this county, on some court day, on a credit of one, two and three years time, except a sum sufficient to pay the costs of suit and commissions of sale which he will require to be paid down. And for the deferred payments he will take bonds payable to himself as commissioner, bearing interest from date of sale and with good personal security. And he will report his action to court. But before entering upon the duties hereunder, said Pennington will execute bond before the clerk of this court in the penalty of \$10000.00, conditioned to faithfully<sup>to</sup> discharge his duties as such commissioner and to account for all moneys which may come into his hands by virtue of his being commissioner in this cause. And this cause is conitnued.

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Petition of Cowan, McClung & Co.  
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To the Hon.W.T.Miller, Judge of the Circuit Court for Lee Co.:

Your petitioners, J.D.Cowan, C.J.McClung, Mathew McClung, R.M. Rhea and Jacob L.Thomas, merchants and partners in trade under the



firm name of Cowan, McClung and Co., humbly praying, would respectfully represent and show unto your honor:--

That William Pennington on the 10th day of October, 1896, instituted in your honor's court a certain suit in chancery against Chas.E.Mallett and the Pocket Coal Company, a Corporation, the object of which, as is shown by the said Pennington's bill, is to have enforced a certain vendor's lien which he had retained on certain land, as set out in the bill, which he had sold to the said Mallett and which the said Mallett had sold to the said Pocket Coal Company now your petitioners will represent and show unto your honor that the said Pennington being indebted to them in the large sum of \$1974.46, with interest from the Third day of May, 1895, and being so indebted to them as aforesaid the said Pennington together with his wife, Barbara J. Pennington, to secure the said debt as aforesaid, and any other advancements which your said petitioners might make to the said Pennington within the next four years, executed to E.W. Pennington, Trustee, a deed of trust upon the land which the said Pennington sold the said Mallett or upon the purchase money still due by the said Mallett upon the said land, and on other land which your petitioners deems unnecessary to mention here. Your petitioners here file a copy of the said deed of trust, and pray that the same may be taken as a part of this petition. And your petitioners will further represent and show unto your honor that the said sum of \$1974.46, secured as aforesaid, has not as yet been paid, except the sum of \$110.22 paid Dec. 21, 1895. And further your petitioners will show unto your honor, that by reason of feeling themselves secure because of the said deed of trust, on June the 7th, 1895, your petitioners advanced the said Pennington another large amount \$543.50, \$241.66 of which became due and payable 60 days from the date last aforesaid, and \$301.84 of which became due and payable 4 months from the date last aforesaid. And your petitioners will further show unto your honor that none of the said sums of money last aforesaid have been paid, but are still due and owing. Copies of the notes evidencing the said debts as aforesaid are here filed and prayed to be taken as part of this petition.



The premises considered your petitioners are advised that by reason of the said deed of trust as aforesaid they have a lien upon the purchase price due by the said Mallett to the said Pennington, to the extent of the said debt as aforesaid, and having a lien by reason thereof, they are advised that they are interested in the subject matter of this suit that they have a right and ought to be made parties to the said suit; and therefore pray that they be made parties to the said suit, that they be allowed to file this petition, that the said Pennington be required to answer the same, that if a sale is made according to the prayer of the bill, that out of the first proceeds of the said sale enough be applied to pay your petitioner said debt, and may all other further and general relief be granted your petitioners that the nature of their cause may demand, and good conscience dictate. And they will ever pray &c.

Rob't L. Pennington

Atty for Cowan, McClung and Co.

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Deed Filed with Said Petition.  
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This deed made and ~~entered~~ into this the 3rd day of May, 1895, by and between William Pennington and Barbary J. Pennington, parties of the first part E.W. Pennington trustee, party of the second part, and all of Lee County, Va.

Whereas the said William Pennington is justly indebted to Cowan McClung & Co. of Knoxville Tennessee, in the just and full sum of (1974.46) nineteen hundred and seventy four & 46/100 dollars due and payable as follows, to-wit: One day after this date which sum of money is evidenced by the note of the said William Pennington of even date with this deed, and which sum of money the said ~~William~~ Pennington waiving the benefit of the homestead law hereby promises and binds himself to pay. And the said William Pennington being engaged in the mercantile business and being desirous of obtaining from the said Cowan, McClung and Company farther credit, and he being willing and desirous of securing to the said Cowan, McClung and Company the



payment of the said sums of money and also the any sum or sums of money which may hereafter become due to them for any goods, wares and merchandise or money which they may sell, or let the said William Pennington ~~Pennington~~ have in the next four years, They the said William Pennington and Barbary J. Pennington, his wife, do and each of them doth hereby give grant, bargain and sell and convey unto the said E.W. Pennington, trustee etc., the following tracts described of land lying and being in Lee Co. Va. in the "Pocket" country bounded as follows, to-wit: The first of which tracts of land is bounded as follows, to-wit:--Beginning on the sothern corner of the land known as the Mallett land, thence S. 26 E. 50 or 60 poles to the white oaks on the steep hill side near the top of a hill, S.  $7\frac{1}{2}$  E. 28 poles to a white oak stump in Robert Stapleton's lot near Stone creek S. 54 E. crossing the said creek, 22 poles to 3 spruce pines on the north side of Stone mountain, thence N 39 E. 52 poles to two maples and a beech on the old McCredie line, and with the said line S.  $39\frac{1}{2}$  E about 275 poles to the old Preston line, thence <sup>S</sup> eastward with the Preston line agreed upon between W.M. Pennington and the said William Pennington, thence with said agreed line, N.  $23\frac{1}{2}$  W. \_\_\_\_\_ poles to the top of the stone mountain to a maple thence with the top of said mountain N. 81 E. 11 poles to a stooping chestnut oak thence N. 65 E. 104 poles to a burnt-sided chestnut and gum, thence ~~W~~ with the top of the said mountain to the Hanging rock, thence to a large rock in the middle of north fork of Powell's river, thence to the said maountain eastward to its top again to A.N. Pennington's corner east of Becklin's Gap, thence with said A.N. & J.D. Pennington's lines westwardly to the top of Fork ridge to a birch, thence with the top of said ridge to the mouth of Straight creek, thence with J.D. Pennington's line to the top of Lone Mountain to <sup>said</sup> ~~said~~ Mallett's line, thence with the said Mallett's line to the beginning and supposed to contain five hundred acres more or less.

The second of said tracts is the same land which was on the 10th day of October, 1891, by the said William Pennington and wife conveyed to the said Chas. E. Mallett and which deed is recorded in the County Court Clerk's Office of Lee County, and to which reference is here



for a more particular description of this land and is supposed to be 994 acres. This last tract of land was on the day aforesaid conveyed to the said Mallett in consideration of \$15.00 per acre for 824 acres of the same, and \$25.00 per acre for 170 acres of the same, on time, and the said Mallett has not paid for the same and has left the country and the report is that he has abandoned his purchase; but in the event that he has not abandoned his purchase and there being unpaid about \$17000.00 which sum of money is yet due to the said William Pennington then in that event, the said William doth hereby assign and transfer to the said E.W. Pennington the said debt <sup>due</sup> on the said land.

In Trust, nevertheless, and for the purposes and uses following, and none other, namely: That the said William Pennington is suffered to remain in possession of the said lands, until default be made in the payment of the said sums of money due and to become due; and when the said William Pennington shall make default in the payment of the said sums of money now due or may hereafter become due to the said Cowan, McClung and Company reason of any goods they may hereafter let the said William Pennington have on credit, then and in the event, on the request of the Cowan, McClung & Company, their representatives or assigns, the said E.W. Pennington shall after advertising the time, terms and place of sail in three public places in Lee County, for thirty days for such as he may deem proper offer the said land or enough thereof to pay any sum of money that may then be to said Cowan McClung & Company, for sail to the highest bidder for cash in hand and out of the proceeds of such sail, he will pay off first all expenses attending the execution of this of trust and commission of sail, and second, he will pay to the said Cowan, McClung & Company whatever may be due them, or their assigns, and the remainder he will pay to the said William Pennington, or his assigns. But if the said William Pennington make no default in the payment of the said sum of money, then this deed to be null and void, otherwise to remain in full force and virtue.

As to the said lands hereby conveyed, and the said debts hereby assigned, the said William Pennington doth hereby covenant to warrant



generally title thereto.

Witnesseth the following signatures and seals the day and year first above written.

William M. Pennington, (Seal.)

Barbary J. Pennington (Seal.)

Virginia, Lee County, to-wit:

I, J. F. Burgin, a justice of the peace in and for the county and state aforesaid, do hereby certify that William M. Pennington and Barbary J. Pennington whose names are signed to the writing above, bearing the date of the 3rd day of May, 1895, have acknowledged the same before me in my county aforesaid.

Given under my hand this the 6th day of May, 1895.

J. F. Burgin, J. P.

Virginia, Lee Co. to-wit:

In the office of the clerk of the said county, the 7th day of May, 1895, this deed was presented and together with the certificate thereto annexed, admitted to record.

Teste: S. V. F. Richmond, clerk.

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Copy of Notes Filed with Said Petition.  
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\$1974.46.

Pennington Gap, Va, May 3, 1895.

One day after date I promise to pay to the order of Cowan McClung & Co. at their office in Knoxville, Tennessee, Nineteen Hundred & Seventy Four and 46/100 Dollars, for value received, and I hereby waive as to this debt the exemption of liability of property which I may be entitled to hold under the provisions of the Homestead Law.

Witness my hand.

Pennington Gap, P. O. Lee Co. Virginia State.

William Pennington.

Cr. Dec. 21, 95 \$110.22.

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\$241.66.

Pennington Gap, June 7, 1895.

Sixty days after date I promise to pay to the order of Cowan,



McClung and Co., at their office in Knoxville, Tenn., Two Hundred and Forty One and 66/100 Dollars, for value received, and I hereby waive as to this debt, the exemption of the property which I may be entitled to hold exempt under the provisions of the homestead law.

Witness my hand.

Pennington Gap P.O. Lee Co., Va. State.

William Pennington.

\$301.84.

Pennington Gap, Va., June 7, 1895.

Four months after date I promise to pay to the order of Cowan, McClung and Co., at their office in Knoxville, Tenn., Three Hundred and One and 84/100 Dollars, for value received, and I hereby waive as to this debt, the exemption from liability of the property which I may be entitled to hold exempt under the provisions of the Homestead Law. Witness my hand.

Pennington Gap P.O. Lee Co., Va. State.

William Pennington.

The plaintiff's Bill as Amended as Stated in Decree.

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee County:--

Humbly complaining, your orator, Wm. Pennington, a citizen of Lee County, Virginia, would respectfully represent unto your honor, That on the 10th day of October, 1891, he sold, conveyed and delivered to one Chas. E. Mallett tow certain tracts or parcels of land lying and being in Lee County, in the Pocket Country,--one of the tracts containing 824 acres at the price of \$15.00 per acre, and the other containing 170 acres at the price of \$25.00 per acre, or the sum of \$16610.00 for both tracts; that by the terms of sale, which is expressed in the deed made, said Mallett paid down to your orator on the purchase price of said land the sum of \$500.00, and was to pay on Jan. 1st, 1892, \$500.00 more, and the residue with interest from the 10th day of Oct., 1891 (the interest payable semi-annually beginning with April 10th, 1892) payable on or before Oct., 10th, 1896, that said



Mallett or his assignee paid to your orator the \$500.00 to be paid on Jan.1st, 1892, and also the first two years interest.

Your orator will further show unto your honor, that said Mallett by deed conveyed said lands to the Pocket Company, a corporation organized under the laws of Kentucky; that \$15510.00 of the purchase price of said lands with interest thereon from the 10th day of October, 1893 is due and unpaid to your orator; that when your orator conveyed said lands to said Mallett, on the face of the deed of conveyance he reserved a lien upon the lands so conveyed to secure the unpaid purchase money and interest to accrue thereon. A copy of which deed is here filed, marked "Deed" and prayed to be taken as a part of this bill of complaint.

Your orator will further show unto your honor that on May 3rd, 1895, he assigned to Cowan, McClung & Co., enough of said debt to secure them in the payment of \$1974.46 on that day due them, any further sum which he might become within four years thereafter due them; that on June 7th, 1895, said Cowan, McClung & Co. did furnish to your complainant goods, wares and merchandise &c. amounting to the sum of \$543.50, \$241.66 thereof due within sixty days from June 7th, 1895, and the residue due or \$310.84 in four months after June 7th, 1895, and that only \$110.22 on Dec. 21st, 1895, has been paid to said Cowan, McClung & Co.

Your orator will further show unto your honor, that the said Chas. E. Mallett is a non-resident of this State; that the said Pocket Company is a corporation created by the laws of the State of Kentucky but has no officer or agent within this State of County, on whom process may be served.

The premises considered, your orator is advised that he has a vendor's lien and he here avers the only lien upon the lands described in said copy of said deed; that his lien is capable only of being enforced in a court of Equity; his prayer therefore is that your honor take cognizance of his cause of complaint, that he be declared to have a vendor's lien upon said lands for the amount of the unpaid purchase money due thereon with its interest; that said lands, or



enough thereof to satisfy said lien, and the costs of this suit be directed to be sold by your honor; that said Chas.E.Mallett and the said Pocket Company, J.D.Cowan, C.J.McClung, Mathew McClung, R.M. Rhea and Jacob L.Thomas, doing business under the style and firm name of Cowan, McClung & Co., be made parties defendants to this bill of complaint, and that they be required to answer the same but they need not do so on oath, that being expressly waived, that an order of publication be duly made against said defendant as the law requires in such cases. And that on a final hearing of the cause all general and special relief be granted your orator that the nature of his case may require to have justice metted out to him. May Process issue &c. And your orator will ever pray &c.

E. W. Pennington Atty for pl.

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Answer of Cowan,McClung & Co. to Said Amended Bill.  
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To the Hon.W.T.Miller, Judge of the circuit court for Lee Co.:

The answer of Cowan, McClung & Co. to an amended bill of William Pennington filed in this Honorable court by him against C.E.Mallett, your respondent and others, in which your respondent has previously filed their petition setting out their claim to and interest in the subject matter of this suit, and in this their answer to the said bill they say that they desire to repeat the allegations set forth in their said petition, and ask that it be taken as part of this answer. Your respondents repeat that they are advised that they are entitled to the first lien upon the fund due by C.E.Mallett to him, the said William Pennington, by reason of the assignment made to E.W.Pennington Trustee to secure their said debt, and pray that upon the <sup>Sale</sup>~~sale~~ of the property asked for by the said Pennington, which sale your respondents join in asking, that the first proceeds of the sale be directed to be paid over to your respondents in a sum sufficient to discharge the debt to them by the said Pennington as set out in the said petition of your said respondents. And upon a hearing my all other, further and general relief be granted your petitioners and respondents that



is in keeping with equity and good conscience.

And they will as in duty bound ever pray &c.

Robt. L. Pennington,

For Cowan, McClung and Co.

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And at another day, to-wit:

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Decree No. 2.  
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Virginia,

At a circuit court continued and held for Lee county, at the  
court-house thereof, on \_\_\_\_\_, the 12th day of June, 1897.

William Pennington,

Complt.

vs.

In Chancery.

Chas. E. Mallett et al.

Defts.

This cause came on this day to be heard upon the papers formerly read therein, and the report of sale made by Comr. E. W. Pennington to C. D. Russell and I. Pennington, which report was filed on May 24th, 1897, and the exceptions of Cowan, McClung & Co. to the confirmation of said sale and report: On consideration of all which and for reasons appearing to the court it is adjudged, ordered and decreed that the exceptions of the said Cowan, McClung & Co. be and are overruled in so far as they object to the confirmation of said sale and report. And it is further adjudged, ordered and decreed that said sale be confirmed to said C. D. Russell and I. Pennington, but they, their heirs ~~and~~<sup>or</sup> assigns and all other persons are hereby enjoined and prohibited from cutting, taking and removing from said land so purchased as aforesaid until they shall have given other good personal security for the purchase price of said land to said Comr. E. W. Pennington; and when said deferred payments are due, said E. W. Pennington will proceed to collect the same and pay enough thereof to Cowan, McClung & Co. to discharge their recovery in this cause, and the residue, if any, hold subject to the future order of the court; and it is further adjudged, ordered and decreed that on account of any failure to collect said



sum of money from said purchase~~se~~ by reason of the insufficiency of the present security, said Comr. E.W. Pennington and his sureties on his bond as such Comr. is hereby <sup>released</sup> ~~relieved~~ from all liability: and the costs in said Comr. Pennington's hands, he will pay out to those to whom it belongs. And the cause is continued.

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Said Report of E.W. Pennington, Comr.  
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Wm. Pennington,

Complt.

vs .

In Chancery.

C.E. Mallette et al.

Deft.

To the Hon. Wm. T. Miller, Judge of the Circuit Court for Lee County:--

Your undersigned, who was at the March term, 1897, of your honor's court appointed a commissioner in said cause to sell the lands mentioned in said cause, begs leave to report that after advertising the time, terms and place of sale for more than 30 days by written notices, posted in the neighborhood of said lands, at the post-office in the town of Pennington Gap and at the <sup>front door of the</sup> court-house and at two other public places (a copy of which advertisement is here filed) he, on the 19th day of May, 1897, at the front door of the court-house of said county, (said day being a court day) in the presence of a large crowd of people, offered said lands for sale at public outcry to the highest and best bidder. He first offered separately the tracts known as the 170 acre and the tract known as the 824 acre tract, but got no bidders for the same. Then he offered the said two tracts for sale together and after considerable bidding and crying said two tracts were knocked down to Chas. D. Russell and Isaiah Pennington for the sum of \$3000.00, who were the highest bidders on said two tracts of land. Your comr. sold said land subject to previous conveyances made therein to one F.A. Stratton. Said purchasers paid down on costs & commissions of sale \$109.00, and executed to me their three several bonds, bearing interest from date of sale for \$963.67, with R.L. Evans, A.N. Pennington, John S. Borgan and Geo. W. Pennington as their sureties. Your Comr. was not satisfied as to the sufficiency of the security of



Your Comr. was not satisfied as to the sufficiency of the security offered, and is not yet satisfied with the same, although the said purchasers have had their <sup>said</sup> sureties make affidavits of their worth over their debts and liabilities, which are here filed for the inspection of your honor, and from their face aggregate \$5000.00 over and above debts and liabilities. The land sold to said purchasers is principally valuable for its <sup>p</sup>olar timber, and your commissioner understands from them that it is their intention to begin soon after confirmation of this sale to cut and remove the timber therefrom, which may be done before the first bond becomes due. So your commissioner thinks that unless other and better personal security be offered said sale should not be confirmed. If it is confirmed, your comr. begs that it be confirmed without holding him liable for the security offered. The price offered your comr. thinks is all right, and probably as much as <sup>said</sup> ~~the~~ land is worth, owing to the fact that it is mountain land, and the mineral right having long ago been conveyed to said Stratton. All which is respectfully submitted. This May 22nd, 1897.

E. W. Penninton, Special Comr.

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Advertisement Mentioned in Said Report.  
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LAND SALE!

Wm. Pennington,

Complt.

vs.

In Chancery.

Chas. E. Mallett et al.,

Defts.

To carry out the decree entered in the above styled pending cause, on the 4th day of March, 1897, now in the Circuit Court of Lee County, I will proceed at the front door of Lee courthouse on the 17th day of May, 1897, and at public out-cry, to the highest bidder, to sell the following described property, to-wit:

The 824 acre and the 170 acre tracts of land described in Complainant's bill in exhibit "Deeds", excepting therefrom such rights as have been heretofore conveyed to one F.A. Stratton. This land is



finely timbered, or enough thereof to pay \$17103.00 and the costs of this suit and the commissions of sale, upon the following terms, to-wit: Enough cash to pay costs and commissions, and the remainder in three equal installments due in one, two & three years from the date of sale. The purchaser will be required to execute bonds bearing interest from the date of sale with good personal security.

E.W.Pennington, Special Commissioner.

This 19th day of March, 1897.

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Affidavits Filed with Said Report.  
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Va.Lee County, to-wit:

I, Geo.W.Pennington, a citizen of Lee County, do hereby swear that I am worth over my debts and liabilities and Poor man's law, from two to three thousand dollars: and this consists of both personal and real estate, real estate in my own name: I have a deed to part of it from Elk.Pennington and a title bond from R.W.Orr for the other: I think my real estate worth about \$2500.00.

Given under my hand this May 17th, 1897.

G. W. Pennington.

The above statement sworn to before me, this May 17th, 1897 by Geo.W.Pennington..

A. B. Munsey, C.C.

I, R.L.Evans, a citizen of Lee County, do hereby swear that I am worth about fifteen hundred dollars. I have about 200 acres of land in my own name. My deed is recorded in the county court clerk's office of this county. This May 17th, 1897.

R. L. Evans.

I, J.S.Burgin, a citizen of this county, do hereby swear that I am worth about \$500.00 above my debts and liabilities: this is mostly in debts of people who owe me. This May 17th, 1897.

Witness: B.H.Sewell,  
E.W.Pennington.

his  
J. S. X Burgin.  
mark.



I, A.N. Pennington, a citizen of Lee County, do hereby swear that I am worth above my debts and liabilities about one thousand dollars and this is mostly in real estate. This May 17th, 1897.

A. N. Pennington.

The foregoing affidavits sworn to before me by Geo.W. Pennington R.L. Evans, J.S. Burgin and A.N. Pennington. This May 17th, 1897.

A. B. Munsey, Clerk.

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Exceptions Endorsed on Said Report.  
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The confirmation of the sale reported herein is objected to because the security offered is insufficient, they are men considerably involved & possess very little personal estate, the purchasers have sold the timber, & expect to proceed to cut the same, & because the Comr. desires to be released if the court should confirm, & he says the bonds are not good.

Robt. L. Pennington, Atty. for Cowan, McClung & Co.

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And at another day, to-wit:  
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Decree No. 3.  
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Virginia,

At a circuit court continued and held for Lee county, at the court-house thereof, on \_\_\_\_\_, the 8th day of June, 1898.

Wm. Pennington,

Complt.

vs.

In Chancery.

C. E. Mallett et al.,

Defts.

This cause came on again to be heard upon the papers formerly read therein, and the report of Comr. E.W. Pennington, showing his receipts and disbursements up to June 1st, 1898, filed in this cause on the \_\_\_\_ day of June, 1898, and was argued by counsel. On consideration of all which it is adjudged, ordered and decreed that said report and the receipts and disbursements of said Comr. Pennington be



and the same is hereby confirmed. And the said Comr. Pennington will receive from said Russell & Pennington any sum of money which they may desire to pay him on the bonds <sup>yet</sup> owing by them on account of their purchase of lands in this cause before the same becomes due, which he will disburse as directed in the order of June 12th, 1897, entered in this cause. And this cause is continued.

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Report Referred to in Above Decree.  
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Wm. Pennington,

Complt.

vs.

In Chancery.

C. E. Mallett et al.

Defts.

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee County:--

Your undersigned commissioner, who was directed by an order entered in the above styled cause on June 12th, 1897, to collect from C. D. Russell and I. Pennington, the purchasers of the land mentioned in this cause, the money due by them on their purchase, and to pay the same over to Cowan, McClung & Co., or a sufficiency thereof to discharge their debts against Wm. Pennington: and also to pay out to those entitled to costs the money which he then had in his hands, begs leave to report that he has paid out <sup>on</sup> ~~the~~ costs in <sup>in</sup> this cause to those entitled and retained in his hands as commissions the sum of \$104.00: and from said Russell & Pennington he has up to this date received on the purchase price of the land bid in by them the sum of \$1025.63 which sum your commissioner has paid over to said Cowan, McClung & Co. Your commissioner here files a statement of the entire receipts by him on account of his commissionership in this cause, and how he has disbursed the same, which statement shows that there is now in his hands the sum of \$5.00. The sum paid by said Russell & Pennington was paid me through G. W. Pennington and A. K. DeBusk, and is sufficient to discharge the first bond of said Russell & Pennington with \$7.54 credited on the second bond, which will not be due until May 17th, 1899. But said Russell & Pennington inform me they want to pay the



same off perhaps before the same becomes due. Now your commissioner prays that this report, and the statement of his receipts and disbursements be confirmed; and that he be authorized to receive from said Russell & Pennington whatever sums they may want to pay on the bonds yet due by them. All which is respectfully submitted. This June 1st, 1898.

E.W.Pennington, Special Commissioner.

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And at another day, to-wit:

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Decree No.4.  
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Virginia,

At a circuit court continued and held for Lee county, at the court-house thereof, on \_\_\_\_\_, the 7th day of July, 1902.

Wm. Pennington,

Complt.

vs.

In Chancery.

C.E. Mallett, et al.

Defts.

This cause came on again to be further heard upon the papers formerly read therein, and the report of receipts and disbursements of Comr. E.W. Pennington, and exceptions thereto of Wm. Pennington and I. Pennington, and was argued by counsel; On consideration of all which and for reasons appearing to the court, the said exceptions are overruled: it is therefore adjudged, ordered and decreed that said report and statements therewith of <sup>said</sup> E.W. Pennington be and the same are hereby confirmed, and said Pennington hereby released and absolved from any future liability on his bond as such commissioner. And it further appearing to the court from said Pennington's report that ~~said~~ C.D. Russell and Isaiah Pennington have paid in full the purchase price of the lands which they bought in said cause, and are now entitled to a deed to the same, it is further adjudged, ordered and decreed that E.W. Pennington, who is hereby appointed a special commissioner for the purpose, will make and deliver to said Russell and Pennington a deed with covenants of special warranty, to the lands



which they bought in this cause, and report his action to court as soon as possible: and to the time of the making of such deed and the filing of his report, this cause is continued.

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Report of Receipts and Disbursements.  
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Wm. Pennington,

Complt.

vs.

In Chancery.

C. E. Mallett et als.

Defts.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County:

Your undersigned, who was heretofore in this cause directed to collect and pay out the proceeds of the sale of the lands mentioned in this cause and sold to C.D. Russell and I. Pennington, beg leave to report that he has collected from said Russell and Pennington the whole of the purchase price of the land except \$160.00 which sum was paid to your commissioner by A.K. DeBusk, one of their sureties: that the whole of the purchase price of said land as collected have been paid out to the parties as shown in an exhibit marked <sup>"S"</sup>~~"8"~~ herewith filed and asked to be taken as a part of this report. On the last note given on the purchase price of said land, your commissioner took judgment at law, and it was on this judgment said DeBusk paid said \$160.00. Said Russell and Pennington paid all of said purchase price of said land except that paid by their <sup>Security</sup>~~surety~~, DeBusk. Now, the land having been paid for, your commissioner supposes that said Russell and Pennington are entitled to a deed to the same. And now, having performed his duties as commissioner, and having paid out the funds which came to his hands, your commissioner prays to be exonerated from ~~xx~~ liability on his bond given as such commissioner. This February 21st, 1902.

E. W. Pennington.

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Statement with Said Report.  
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Chancery cause of Wm. Pennington vs. C.E. Mallett et al.  
In apc with E.W. Pennington, Comr.

|                |                                                                    |                  |                |
|----------------|--------------------------------------------------------------------|------------------|----------------|
| 1897 June 1.   | By amt. from Russell & Pennington                                  |                  | \$109.00       |
| 21             | To amt. paid A.B. Munsey, clerk (1)                                | 10.00            |                |
| 12             | " " " A.M. Brown for Orders Pub(2)                                 | 10.00            |                |
| "              | " " " retained Atty fee (3)                                        | 15.00            |                |
| "              | " " " Com. on \$3000.00 (4)                                        | 69.00            |                |
| 1898, Mar 14.  | By " from R. & P. thro DeBusk,                                     |                  | 53.39          |
| " "            | " " " " " "                                                        |                  | 95.39          |
| April 4,       | " " " " " "                                                        |                  | 103.07         |
| Mar. 25,       | To " paid Cowan & McClung & Co. (5)                                | 148.78           |                |
| April 4,       | " " " " " (6)                                                      | 103.07           |                |
| " 14           | By " from R. & P. through A.K. DeBusk                              |                  | 53.80          |
| " 15           | " " " " " "                                                        |                  | 51.74          |
| " 15,          | To " paid Cowan, McClung & Co. (7)                                 | 105.54           |                |
| " 30           | By " from R. & P. through A.K. DeBusk                              |                  | 360.42         |
| My, 2,         | To " paid Cowan, McClung & Co., (8)                                | 360.42           |                |
| May, 23        | By " from R. & P. thro A.K. DeBusk,                                |                  | 307.82         |
| " 24           | To " paid Cowan, McClung & Co. (9)                                 | 307.82           |                |
| June, 1.       | " Bal in E.W.P.'s hands,                                           | 5.00             |                |
|                |                                                                    | <u>\$1134.63</u> | <u>1134.63</u> |
| June, 1.       | By BAL. per contra.                                                |                  | 5.00           |
| June 4,        | By amt. from R. & P. through A.K. DeBusk,                          |                  | 255.92         |
| June 17,       | By " " " " " "                                                     |                  | 157.47         |
| June 10,       | To amt. paid Cowan, McClung & Co. (10)                             | 255.94           |                |
| " 27,          | " " " " " (11)                                                     | 157.47           |                |
| Sept. 5,       | By amt. from R. & P. thro Grady & Co.<br>\$50.00 & DeBusk \$101.51 |                  | 151.51         |
| " 5,           | To " paid Cowan, McClung & Co. (12)                                | 151.51           |                |
| " 29,          | By " from R. & P. thro DeBusk                                      |                  | 106.43         |
| Oct. 3,        | " " " " " Grady & Co.,                                             |                  | 100.00         |
| " 14,          | To amt. paid Cowan, McClung & Co., (13)                            | 206.43           |                |
| " 14,          | By " from R & P. thro DeBusk                                       |                  | 102.56         |
| Nov. 17        | To taxes paid,                                                     | 22.12            |                |
| Dec. 15,       | By amt. from R. & P. thro DeBusk                                   |                  | 114.40         |
| 16,            | To " pd. Cowan, McClung & Co. (15)                                 | 115.00           |                |
| Jan. 3, 99     | By " from R. & P. thro Starkey & Grady                             |                  | 100.00         |
| Do             | To " paid Cowan, McClung & Co. (16)                                | 110.00           |                |
| Jan. 28/99     | By " from R. & P. thro DeBusk,                                     |                  | 110.05         |
| do             | To " paid Cowan, McClung & Co. (17)                                | 120.00           |                |
| June 10/99     | By " from R. & P. thro DeBusk                                      |                  | 175.52         |
| June 12/99     | To " paid Cowan, McClung & Co., (18)                               | 200.00           |                |
| June 23,       | By " from Starkey & Co. for R. & P.                                |                  | 50.00          |
| June 26,       | By " " DeBusk do                                                   |                  | 55.01          |
| July 27,       | " " " Starkey & Co. do                                             |                  | 50.00          |
| July 31,       | To " paid Cowan, McClung & Co., (19)                               | 160.00           |                |
| Sept. 30,      | By " Grady & Co. for R. & P.                                       |                  | 110.83         |
| Oct. 3,        | To " paid Cowan, McClung & Co., (20)                               | 120.00           |                |
| Nov. 11,       | To " paid taxes 1899 (21)                                          | 9.80             |                |
| 1900 May 17 By | " from Grady & Co. for R. & P.                                     |                  | 106.50         |
| May 17,        | To " paid Cowan, McClung & Co. (22)                                | 115.00           |                |
| June 27,       | By " from Grady & Co., for R & P                                   |                  | 100.50         |
| June 28,       | To " paid Cowan, McClung & Co., (23)                               | 108.43           |                |
| 11-15          | To amt. paid taxes for 1900 (24)                                   | 5.78             |                |
| 12-1           | By amt. from C.D. Russell                                          |                  | 100.00         |
| 12-3           | To amt. paid Cowan, McClung & Co., (25)                            | 25.10            |                |
| 12-3           | " " " Pennington Bros. note (26)                                   | 20.30            |                |
| 12-3           | " " " E.W. Pennington note (27)                                    | 32.09            |                |
| 1901 5-1       | By " from C.D. Russell thro Albert Kirk                            |                  | 50.00          |
| 5-7            | To " pd. Powers Little & Co. (28)                                  | 66.75            |                |
| 9-25           | By " from Russell                                                  |                  | 24.00          |
| 9-25           | To amt. Pd. Powers, Little & Co.,                                  | 24.00            |                |
| 1902, 1-6      | By amt. from A.K. DeBusk, security for<br>Russell & Pennington     |                  | 160.00         |
| 1-9            | To costs pd. A.B. Munsey                                           | 5.89             |                |
|                | " Atty fee pd. Pennington Bros.                                    | 2.50             |                |
|                | " clerk's fee paid B.M. Morgan,                                    | .25              |                |



|           |                                 |                  |                  |
|-----------|---------------------------------|------------------|------------------|
|           | To fees & Coms pd. I. P. Ely    | 10.00            |                  |
|           | " amt. pd. Powers, Little & Co. | 139.99           |                  |
| 11--30/01 | " " taxes for 1901              | 1.37             |                  |
|           |                                 | <u>\$2185.70</u> | 2185.70          |
|           |                                 |                  | <u>1134.63</u>   |
|           |                                 |                  | 2180.70          |
|           |                                 |                  | <u>\$3314.33</u> |

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Exceptions to Said Report.  
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William Pennington,

vs.

In Chancery.

C. E. Mallett, et al. Defts.

The report of E. W. Pennington filed in this cause on the first day of July, 1901, excepted to by William Pennington as follows:

The commissioner has no right to pay to the said E. W. Pennington note filed as voucher No. 27 with his report, amounting to \$32.09, but the same should have been paid to Powers, Little & Co. The land in this cause was sold for \$3000.00. After the payment of costs and the debt of Cowan, McClung & Co., which was the first lien, the residue was directed by William Pennington to be paid to Powers, Little & Co., on a judgment. The commissioner had no right to retain a part of this fund to pay his own private debts.

The confirmation of this report is excepted to by Isaiah Pennington, because this suit is not in a condition to make to him and C. D. Russell a good and sufficient deed. At the time of the institution of this suit the legal title to the land herein sold and purchased by the said Isaiah Pennington and C. D. Russell, was in the Pocket Company (a corporation), and said Pocket Company has never been served with process in this cause; hence no title can be made for the land sold.

L. T. Hyatt, Atty for Wm. Pennington & Isaiah Pennington.

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Decree Final.  
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And now at this day, to-wit:

Virginia,



At a circuit court continued and held for Lee county, at the  
court-house thereof, on \_\_\_\_\_, the 8th day of July, 1902.

Wm. Pennington,

Complt.

vs.

In Chancery.

C. E. Mallett et al.

Defts.

This cause came on again this day to be heard upon the papers  
formerly read herein, and the report and deed of E.W. Pennington filed  
herein, and was argued by counsel. On consideration of all which and  
said report being unexcepted to, and for reasons appearing to the  
court it is hereby adjudged, ordered and decreed that said report and  
deed be and are each hereby confirmed. And the said C.D. Russell and  
Isaiah Pennington will pay to the said E.W. Pennington the sum of five  
dollars for his services in making them the said deed. And there  
being nothing else to be done in this case, it is stricken from the  
docket.

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Report of Deed.  
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Wm. Pennington,

Complt.

vs.

In Chancery.

C. E. Mallett, et al.

Defts.

To the Hon. H. A. W. Skeen, Judge of the circuit court for Lee county:

Your undersigned E.W. Pennington, Special Commissioner, would  
respectfully report unto your honor that heretofore he was appointed  
in the above styled cause a special comr. to make C.D. Russell and  
Isaiah Pennington the purchasers of the land in said cause mentioned  
and described, that he has performed that duty and here files the  
deed which he has made to said parties for the inspection of the court.  
And now having performed his duties according to the appointment of  
your honor, he begs to be releaved from further duties hereunder.

All which is respectfully submitted,

This the 3rd day of July, 1902.

E. W. Pennington, Special Commissioner.  
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Virginia, Lee County, to-wit:

I, A.B.Munsey, Clerk of the circuit court for the county and State aforesaid, do certify that the foregoing is a true transcript of the record and proceedings in a certain suit in equity lately depending in the said court between Wm.Pennington, plaintiff, and Chas.E.Mallett, et al, defendants.

Given under my hand this the 25<sup>th</sup> day of March, 1903.

- A.B. Munsey, clerk.



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W<sup>m</sup> Pennington

vs { In Chancery,  
Chas E. Mallett et al

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"Exhibit No. 2."

Clerk \$10.00

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W<sup>m</sup> Pennington

vs. { Transcript  
of Record.  
Chas E. Mallett et al

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This Deed made this the 26th day of August, A.D.1891, by and between John L.Pennington and Fannie E., his wife, of Lee County, Virginia, parties of the first part, and Charles E.Mallett, of Brooklyn, New York, party of the second part:--

Witnesseth, That for and in consideration of the sum of Eight dollars per acre, paid, and to be paid by the said second party as follows, to-wit<sup>x</sup> Five Hundred Dollars cash in hand paid, the receipt of which is hereby acknowledged, and the remainder to be paid in ten years from the 18th of Aug.1891, with legal interest thereon from that day, which shall be paid semi-annually; that is to say, all accrued interest on said deferred payment shall become due and payable on the 18th day of February and the 18th day of Aug.of each year hereafter until the expiration of said ten years the said Parties of the first part do and each of them doth hereby give, grant, convey and surrender unto the said party of the second part, the surface all timber of whatever kind situated and growing thereon (including eight hundred poplar trees) and whatever minerals oils and gases that may be in and on the following described tracts or parcels of land, not heretofore sold and conveyed to one F.A.Stratton, of        tracts or parcels of land lying and being in Lee County, Virginia, in the Pocket country and on the waters of Straight creek and in the aggregate containing Eleven Hundred and Sixty five acres, the first of which tracts of land is the same that was on the 26th day of September, 1889, conveyed to said John L.Pennington by William Kirk and wife, the deed of which conveyance being of record in the County Court Clerk's Office in Lee County, in Deed Book No.25,page 467, and is bounded as follows, to-wit:- Beginning on a poplar corner in the McCauley survey thence with a line of the same S.31 E.123 poles to a Lynn in said survey, S.58½ W.13½ poles to the top of Bradley's ridge, N.61½ W.12½ poles with the top of said ridge as it meanders, N.32½ W.18 poles, N.46½ W.6 poles, N.50 W. 10 poles, N.9½ W.21½ poles, N.51 W. 7½ poles, N.66½ W.13½ poles, N.32 W.3½ poles, N.57½ W. 16½ poles to a gum, N.65 W.11 poles to a red oak bush, *N.12 W.18½ poles to a black oak bush,* N.8 W. 25 poles to two gums, N.36 E. 15½ poles to two chestnuts, N.15 E. 10 poles, N.20 W.11 poles to a black oak, N.18½ E.



19 poles to a chestnut, N. 18 W. 7 poles to a point opposite poplar first mentioned, thence with William Pennington's line to the Beginning, and containing forty seven and one-half acres.

The second of which tracts of land <sup>is the same land</sup> that was deeded<sup>ed</sup> to said John L. Pennington by James D. Pennington and by deed bearing date on the day of January, 1889, and recorded in Deed Book 26 Page 462, and bounded as follows, to-wit: Beginning on a poplar on the head of the right hand fork of Puckets creek at the upper end of a field known as the Joel Alsop field, thence running a south east course square up the ridge to the top of the ridge, thence a north course with the top of the ridge to the top of Bradley's ridge and Jemima Garrett's line to the top of Little Black Mountain and the Ky. line, thence a west direction with the top of said Mountain and said Ky. line to opposite the Salt Peter Cave, thence down the mountain with S.C. Russell's line to a large maple at the foot of the mountain, thence down a small ridge with said Russell's line (a marked line) to a large Coal Bank at the forks of the branch, to a spring known as the Joel Alsop spring, to a chestnut maple and sassafras, all marked thence southward a straight line across a ridge and hollow to the top of another ridge to three large chestnuts below what is known as the chestnut house, thence with the crest of said ridge, a marked line, an eastward direction to the upper end of the field heretofore mentioned, thence down the ridge to a large beech at the branch marked, thence down the branch about one hundred yards to the Beginning, and supposed to contain four hundred and eight acres.

The third of which tracts or parcels of land and being the same land that was conveyed to said John L. Pennington on Nov. 15, 1888, by G.W. Russell and by A.M. Goins Comr. on April 5/89 which deeds are of record in Deed Book 24, pages 173 & 174 and is bounded as follows, to-wit: Beginning at a white oak, sourwood, and dogwood on the N.W. bank of Straight Creek corner to Mourning Andis dower and with a line of the same N. 84 E. 8 poles to the Creek, thence up and with the meanderings of the Creek N. 47 E. 39 poles, N. 58 E. 118 poles, N. 29 E. 5 poles, N. 13 W. 23 poles to a corner of the G.W. Peters land in said creek, with



two spruce pines standing on the west bank marked as pointers and as a fore and aft, thence up a spur of a ridge N.  $78\frac{1}{2}$  W. 4 poles to a white oak and service bush on the top of said spur and with the top and meanders of said ridge N. 45 W. 14 poles to a double black oak, N.  $16\frac{1}{2}$  W. 73 poles to a chestnut oak on the top of said ridge, N. 45 W. 50 poles to a chestnut marked as a pointer, N.  $34\frac{3}{4}$  W.  $11\frac{1}{2}$  poles to a large black oak and two black oak saplings, S. 50 W. 180 poles to a poplar on Bradley's ridge and corner in line of the McCrady survey, S. 65 E. 190 poles to the beginning and containing one hundred and eleven acres.

The fourth of which tracts of land being a part of the same tract that was conveyed to the said John L. Pennington by William Pennington by deed bearing date the 1st day of July, 1884, and recorded in Deed Book 20, page 526, and bounded as follows, to-wit: Beginning on the top of Lone Mountain at two maples, a black gum and white oak marked (with a knife) thence running a straight line from the top of said mountain crossing Straight creek to the top of Bradley's ridge southwardly to a Spanish and white oak, near the top of said ridge, thence with the top of said ridge and near a small mound on the top thereof to five sourwoods, a hickory, red oak and wahoo, thence northwardly to a black gum, near the McCredie line on top of a spur of said ridge eastwardly of Cris Kirk's field) thence running with said McCredie line north to a poplar on McCredie's line and corner to Mourning Andis dower line, thence N. 50 E. 180 poles to a large black oak and two black oak saplings, S.  $34\frac{3}{4}$  E.  $11\frac{1}{2}$  poles to a chestnut, S. 45 E. 50 poles to a chestnut on the top of a spur of Bradley's ridge, S.  $16\frac{1}{2}$  E. 73 poles to a double black oak, S. 45 E. 14 poles to a white oak and service bush on the top of said spur, S.  $78\frac{1}{2}$  W. 4 poles to a corner of G.W. Peters land, to two spruce pines one on the west and the other on the east bank of Straight creek, thence down said creek about 20 poles to a spruce pine on the east bank of said creek, thence a straight line to the top of the ridge to H.A.L. Maness corner, thence southwestwardly with the meanderings of said ridge to two black oaks near a grave yard, thence eastwardly some ten poles to a



large rock, thence with said Maness line crossing " hollow to a large hickory on the top of a ridge, thence with said Maness line and up said ridge to the top of Lone Mountain and to Mourning Andis dower line thence down said mountain and with said dower line to the beginning containing three hundred and twenty acres. A small portion of last described tract, thirteen and three-fourths acres was deeded to said John L. Pennington by E. L. Parsons by deed bearing date June 26th 1889, which deed is recorded in Deed Book 24 page 174 and to which deed reference is here made for a more particular description of the same.

The fifth of which tracts of land being the same land conveyed to said John L. Pennington by William Pennington by deed bearing date February 1st, 1890, and recorded in Deed Book 25 page 464 and bounded as follows to-wit: Beginning on a poplar in the McCradie line thence S. 38 W. 146 poles, N. 41 W.  $13\frac{1}{2}$  poles, N. 28 W. 11 poles, N.  $3\frac{1}{2}$  E. 24 poles, N. 21 W. 30 poles, N.  $12\frac{1}{2}$  E. 19 poles, N.  $4\frac{1}{2}$  W. 10 poles, N. 22 E. 19 poles, N.  $32\frac{1}{2}$  W. 16 poles, N.  $47\frac{1}{2}$  W. 35 poles, N.  $13\frac{1}{2}$  E. 19 poles, N.  $44\frac{1}{2}$  W. 28 poles, North 34 poles, N. 26 W. 29 poles, N. 51 W.  $12\frac{1}{4}$  poles, N. 86 W. 16 poles, N. 27 W. 29 poles, N. 63 W. 20 poles to a small chestnut and three oaks, N. 47 E. 26 poles, N.  $69\frac{1}{2}$  E. 14 poles, N.  $49\frac{1}{4}$  E. 16 poles, S.  $82\frac{1}{2}$  E.  $12\frac{1}{2}$  poles, S. 31 E. 14 poles, S.  $53\frac{1}{4}$  E. 8 poles, S.  $45\frac{1}{2}$  E.  $14\frac{1}{2}$  poles, S. 76 E.  $13\frac{1}{2}$  poles, S.  $69\frac{1}{2}$  E. **27** poles, N.  $36\frac{1}{2}$  E.  $8\frac{1}{2}$  poles, N.  $46\frac{1}{4}$  E. 20 poles, S.  $86\frac{1}{2}$  E. 36 poles to a chestnut on a high point, S.  $61\frac{1}{2}$  E. 10 poles, S.  $20\frac{1}{4}$  E. 18 poles, S. 77 E. 38 poles to a stake in the McCredie line, thence S.  $3\frac{1}{4}$  W. 166 poles to the Beginning, and containing two hundred and fifty two acres.

The sixth and last of said tracts of land being the same land purchased from Gilbert Thompson and bounded as follows, to-wit: Beginning at three large chestnuts on the top of a ridge thence north-westwardly with the meanderings of said ridge to the head of the Chestnut House Hollow and to William Kirk's corner, thence down a ridge and with said Kirk's line to a beech, thence a straight line to the beginning and containing fourteen and one half acres. Together with all the appurtenances to the said land belonging or in anywise appertaining. To have and to hold said tracts or parcels of land with all



their appurtenances, unto the said C.E.Mallett his heirs and assigns forever with general warranty. To secure the payment of all the unpaid purchase price of said land and any interest that may hereafter accrue thereon said John L.Pennington retains a vendors lien on the land herein conveyed. And the said parties of the first part for themselves, their heirs and assigns covenant with the said C.E.Mallett his heirs and assigns that they are seized in fee simple of said several tracts of land, the timber of <sup>or</sup> ~~any~~ kind (including eight hundred poplar trees) growing thereon and all the minerals, oils and gases in, on and under said land not heretofore conveyed to said Stratton, with their appurtenances, that they have good right and lawful power to convey the same in fee simple, that the said Mallett his heirs and assigns shall have quiet and possession thereof forever; that said land, timbers, minerals oils and gasses are free from all incumbrances and charges whatsoever; and that they will execute and deliver such further assurances of and for said land, timbers, minerals, oils and gases, as may be requisite to make the title thereto of said Mallette, his heirs and assigns, perfect, sure and complete. Witness the hands and seals of the said parties of the first part, the day and year first above written. Said Mallette reserves the right to pay of said deferred payments, or any part thereof, at any time he may choose to do so before the same becoms due and to which said first parties agree.

J. L. Pennington, (Seal.)

Fannie E. Pennington, (Seal.)

Virginia, Lee County, to-wit:

I, John P. Myers, a Justice of the Peace in and for Lee County, Virginia, do hereby certify that John L. Pennington and Fannie E. Pennington his wife whose names are signed to the writing above, bearing date on the 26th day of August 1891, have acknowledged the same before me in my county aforesaid. Given under my hand this the 29th day of August A.D. 1891.

J. P. Myers, J.P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the said county, Sept. 2<sup>d</sup> 1891 this



deed was presented and together with the certificate thereto annexed,  
admitted to record.

Teste, John R. Gibson, Clerk.

A copy, Teste: B. H. Morgan, clerk.

(D.B. 27, p. 217 &c.)



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Wm Pennington  
vs. { In Chancery.  
Chas. E. Mallett et al

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"Exhibit No. 4."

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John L. Pennington et al  
To { Deed.  
Chas. E. Mallett.

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Memorandum of a contract made and entered into this Day by and between John L. Pennington of the first part and M.C. Parsons of the second part. Witnesseth that whereas the party of the first part agrees to sell and the party of the second part agrees to pay to sell a debt which party of the first part holds against C.E. Mallett for the sum of eight thousand eight hundred and twenty dollars which is secured by a lien upon a tract of land sold by the party of the first part to said C.E. Mallett and a Deed of conveyance made by said party of the first part to said Mallett and now of record in the clerks office of the county court of Lee county to which reference is here made for a more particular description of said debt and the land securing the same and which said debt hereinabove mentioned is secured by the retaining of a vendors lien thereon and the party of the first part hereby sells transfers and sets over to the party of the second part said debt of \$8820.00, and hereby conveys to the party of the second part all the right title and interest he has in and to said lien so retained on said land for the securing of the debt aforesaid.

In consideration of the assignment aforesaid the party of the second part agrees to pay and hereby pays in hand to the party of the first the sum of seven thousand four hundred and ten Dollars to be paid and is paid as follows Viz: Four Thousand and one hundred and twenty dollars in the Wm.A. Parsons tract of land situated in the Pocket on the waters of Straight creek Lee County, Va. and is the same whereon the said Wm.A. Parsons now resides containing four hundred and twelve acres be the same more or less and for a more particular description thereof reference is here made to the Deeds & title papers of the said Wm.A. Parsons now of record in the clerk's office of the county court of Lee County Va.: But no conveyance of the said tract is to be made until the debt herein <sup>first</sup> mentioned shall be fully paid: It being understood that the legal title thereto is hereby retained as security for so much of the assignment herein made as the price of said land covers. And for the residue three thousand two hundred and ninety (\$3290.) dollars the said M.C. Parsons this day assigns to said J.L. Pennington notes and bonds on various persons now and hereafter to become due:



and which are fully shown by said notes and bonds and the assignments thereon. The debt herein first assigned by the party of the first part is due and payable in seven years & six months about with the interest thereon payable semi annually. Witness the following signatures and seals this February 2<sup>nd</sup> 1894.

J. L. Pennington, (Seal.)

M. C. Parsons, (Seal.)

Virginia, Lee County, to-wit:

I, S.V.F. Richmond, clerk of the county court for the county aforesaid in the State of Virginia, do certify that J.L. Pennington and M.C. Parsons whose names are signed to the writing above bearing date on the 2nd day of February 1894 have acknowledged the same before me in my county aforesaid and said Deed is admitted to record. Given under my hand this 2nd day of February 1894.

S. V. F. Richmond, Clerk.

A copy, from D.B.No.29, p.589,

Teste: B. M. Morgan, clerk.



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Wm Pennington  
vs. { In Chancery.  
Chas. E. Mallett, Att.

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"Exhibit No. 5"

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J. L. Pennington  
with { Contract.  
M. C. Parsons

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This agreement made this 6th day of October 1894 between M.C. Parsons of Lee Co.Va.of the first part, and Henry Nicoll, of Middlesborough, Ky., of the second part,

Witnesseth; That the party of the first part agrees to sell set over & transfer to the party of the second part all that parcel of land known as the Elk Knob farm lying in Lee Co.Va. and this is understood to be a sale in gross & not by the acre, same being all the lands on and adjoining said Elk Knob and now in possession of said party of the first part that can be included in one boundary for the sum of Twelve thousand dollars(\$12000.00) paid and to be paid as follows:

Fifteen hundred dollars (\$1500.00 by the conveyance by the Pocket Co.to the party of the first part of all right title and interest belonging to the Pocket Co.in a tract of parcel of land lying in the Pocket in Lee Co.Va. and containing eleven hundred & sixty-five (1165) acres be it more or less, said tract being the same as that conveyed by deed to the Pocket Co. by Chas.E.Mallett and conveyed by deed to Charles E.Mallett by John L.Pennington, both of which deeds are recorded in County Clerk's Office at Jonesville, and reference is hereby made to said records for a particular description of said land. Five hundred (\$500.00) to be paid to the party of the first part on October 1st, 1895 and \$1100.00 to be paid on the first day December 1896, and 1100.00 on each first day of December following until the full amount has been paid. Interest on the deferred payments is to be calculated at (3%) three per cent per annum. The party of the first part agrees to accept in payment of the amount of interest falling due each year either cash or pasturage estimated at one dollar (\$1.00) per month for each horse,mule, ox, or cow, and each head of cattle three (3) years old or over, and seventy five cents per month for each head of two years old & less than three and fifty cents per month per each head of yearlings, or corn delivered at the farm owned by the party of the first part on Hickory Flats value of said corn to be estimated at fifty cents (50cts) per bushel. If the amount of interest is paid in cash it is to be paid on December 1st of each year beginning December 1st



1895, and if in grazing it is to be taken during the seven months between April first and November 1st of each year beginning April 1st 1896 for the year then past, and if in corn it is to be delivered during the months of December of each year beginning December 1895.

The party of the first part agrees to give a good & sufficient bond for the title of the property conveyed by him and to deliver to the party of the second part a deed of said land with vendor's lien reserved before December 1st 1896 and to give the party of the second part possession of the land on November 15th 1894. And the party of the second part agrees to cause to be given by the Pocket Co. to the party of the first part a deed of the aforesaid tract of land in the Pocket containing 1165 acres and formerly owned by John L. Pennington and to grant to the said party of the first part undivided possession of the land all interlineations and alterations on this paper were made previous to signing. Witness our signatures and seals this 6th day of October 1894.

M. C. Parsons, (Seal.)

Henry Nicoll, (Seal.)

Witness John Delclisur.

Virginia, Lee County, to-wit:

I, A.G. Hyatt, a Notary public for the county in the State aforesaid, do hereby certify that Henry Nicoll, whose name is signed to the foregoing writing, bearing date October 6th 1894 has acknowledged the same before me in my county aforesaid. And I also certify that John Delclisur whose name appears as a witness to the above contract personally appeared before me and made oath that he was present at the time M.C. Parsons & Henry Nicoll made and executed the above contract on October 6th 1894, and that he witnessed the signatures of both parties and read the contract to M.C. Parsons, and I also certify that H.N. Mitchells personally appeared before me and made oath that he was present in the room where & at the time the above contract between M.C. Parsons & Henry Nicoll was made, that he furnished the paper to Henry Nicoll & saw them prepared. Given under my hand this the 21st day of February, 1895.



A. G. Hyatt, N. Public.

Virginia, Lee County, to-wit:

In the office of the clerk of said county, the 21st day of February 1895, this deed was presented and together with the certificate thereto annexed, admitted to record.

Teste: S. V. F. Richmond, clerk.

(On Margin on D.B.)

The 5 last installments due under this contract is this day assigned to A.L.Pridemore and Wright Stickley. This Oct.20,1899.

J.C.Jessee, Admr.of M.C.Parsons.

Attest: B.M.Morgan, Clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B.No.31, p.177.)



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Wm Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al

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"Exhibit No 5 1/2"

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M. C. Parsons  
with { Contract  
Henry Nicoll.

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L. T. HYATT,  
ATTORNEY AT LAW,  
JONESVILLE, VIRGINIA.



J. L. Huntington

, 4

Ellen Lessee et al

Record.



-I-

John L. Pennington vs. Ellen Jessee et al.

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TRANSCRIPT OF THE RECORD.  
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VIRGINIA:

Pleas before the circuit court of the county of Lee, at the court-house thereof, on Monday, the 11th day of June, 1900.

Be it remembered that heretofore, to-wit: at rules held in the clerk's office of the said court, on the \_\_\_\_ day of October, 1895, came John L. Pennington, by his counsel, and filed his bill in chancery against Ellen Jessee et al., which bill is in the following words and figures, to-wit:

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Bill.  
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To the Honorable W.T. Miller, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining, your orator, John L. Pennington, will respectfully show unto your Honor: That on the \_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, he was the owner of a tract, or rather, a number of tracts of land, situated in the Pocket in Lee County, Virginia, containing in the aggregate 1165 acres; that on that day he sold said land to one C.E. Mallett for the price of \$9320.00, of this sum the said Mallett paid down the sum of \$500.00, and for the residue the said Mallett executed his bond, or agreement, by which he bound himself to pay the residue, to wit, the sum of \$8820.00, ten years after the date thereof, bearing interest from date, payable semi-annually, and at the same time your orator conveyed said lands to the said Mallett, retaining a lien thereon for the sum still remaining unpaid. All of which is fully shown by said deed and agreement which are filed herewith as a part hereof marked "A". Sometime after your orator conveyed said land to the said Mallett as aforesaid, he, the said Mallett, conveyed it to the Pocket Coal Company. Sometime after this sale by your orator to the said Mallett, he, your orator, purchased from one M.C.



Parsons a tract of land lying on Straight creek, in the Pocket, Lee County, Virginia, known as the William A. Parsons tract, containing 412 acres, at the price of \$10.00 per acre, and on that day the said Parsons executed to your orator his title bond by which he bound himself to convey said tract of land to your orator by good and sufficient deed. This bond was duly recorded in the Clerk's Office of the County Court of Lee County, all of which will more fully appear by reference to a copy thereof which is herewith filed as a part hereof marked "B". At the same time your orator sold and assigned to the said M.C. Parsons the said debt for \$8820.00 due to him from the said Mallett as aforesaid, that is, he sold and assigned to him the principal of said debt, and the interest afterwards to accrue, but not the interest already accrued and then remaining unpaid. In this way and by this sale and assignment, your orator paid to the said Parsons, the entire purchase price of said land, to-wit, the sum of \$4120.00. Deducting this sum from the said Mallett debt of \$8820.00 leaft a blaance due to your orator of \$4700.00, which the said Parsons was to pay to your orator as follows: first, your orator was to give him a discount of 4% for seven and one half years on said sum of \$4700.00, then said Parsons was to pay to him 2000 bushels of corn at 50 cents per bushel delivered at the said Parsons' crib, \$100.00 worth of hay, and the residue of said \$4700.00 in notes on good and solvent parties in Lee County, Virginia. Under and pursuant to this contract the said Parsons delivered to your orator 1903 bushels of corn, \$100.00 worth of hay, and notes amounting to something over \$2000.00, leaving a balance due to your orator from the said Parsons on said transaction of someting like \$500.00, the exact amount is not known to your orator, but he will furnish a full statement together with the proof thereof.

Your orator will now show your Honor that afterwards, to-wit, on the \_\_\_\_ day of \_\_\_\_\_, 1894, the said Parsons sold to one Henry Nicoll the Elk Knob farm in said county, and as a part payment thereof, the said Nicoll sold to him the said 1165 acres of land theretofore sold by your orator to the said Mallett as aforesaid at the price of



\$1500.00, and the payment in full of said \$8820.00 due from the said Mallett to your orator, and sold and transferred by him to said Parsons as aforesaid, and in this way the said Parsons collected or settled the said Mallett debt. Pursuant to this contract with the said Nicoll, the ~~said~~ Pocket Coal Company on the 28th day of December, 1894, made and executed a deed by which it conveyed to said Parsons said 1165 acres of land. This deed was delivered to the said Nicoll to be by him delivered to the said Parsons, but before he had the opportunity of doing so the said Parsons died, but your orator is informed and here avers that said deed is in the hands of said Nicoll ready to be delivered whenever called for. The said Henry Nicoll is, as your orator is informed, one of the members of the Pocket Coal Co.

Your orator will now show your honor that about the time of this contract between the said Parsons and Henry Nicoll, by which the said Parsons became the owner of said 1165 acres of land, he, your orator, purchased said 1165 acres of land from said M.C. Parsons, or rather exchanged with him the 412 acre tract of land for said land. The exact terms of said contract, or exchange, are as follows: Said 1165 acres were rated to your orator at the price of \$9320.00, to be paid as follows, to-wit, the William A. Parsons 412 acre tract at \$4120.00, the balance due to your orator from said Parsons on the Mallett matter hereinbefore set out, next a discount on said \$4700.00 of Mallett debt of 4% for six and one half years, the balance thereof in Poplar, Cucumber and Ash timber or trees standing on said 1165 acres of land, at \$4.00 per thousand feet for all merchantable trees over 16 inches in diameter taken. This contract was not reduced to writing, but possession of said 1165 acres of land was given by the said Parsons and taken by your orator, and under said contract, and acting on the faith thereof, he has made valuable permanent improvements thereon. And your orator at the same time delivered to, and the said M.C. Parsons took possession of said 412 acres of land, and has held the same ever since, or until his death. About the time thereof or shortly after this contract, the said M.C. Parsons sold to one William R. Johnson, at the price of \$4.00 per thousand feet, the merchantable Poplar



Cucumber and Ash timber standing on said 1165 acres and put him in the possession thereof for the purpose of cutting and marketing it. And afterwards the said Parsons by and with the consent of your orator and in full recognition of said contract, sold a small amount of oak and Walnut trees standing on said land to said Johnson, who, pursuant to said contract, has cut and removed the same from said land. Under and pursuant to said contract with said Johnson first mentioned, there has been cut and removed from said land Poplar, Ash and Cucumber timber worth, as your orator is informed and believes, at the contract price of \$4.00 per thousand feet, at the least \$3200.00, and it may be much more, which will leave very little more, if anything, to be paid to the said Parsons under said contract. As before stated this contract was not reduced to writing, but it was made in the presence of witnesses who will testify to the same, and the failure to reduce it to writing was not thought by either party to be important, because possession was delivered by each to the other of his tract of land.

Your orator is advised that there has been such full performance or part performance of said contract as entitled him to have the same specifically executed, and said 1165 acres of land conveyed to him. He avers that he can not be compensated in damages for the injury he will sustain should said contract not be executed. Your orator has at all times since he made said contract, been ready, willing and fully able to do everything on his part incumbent upon him and he is now ready and willing to execute such deed of release to said 412 acre tract as may be necessary to vest title of the same in the heirs of the said M.C. Parsons, and for that purpose he files herewith as part hereof a deed of release, duly executed and acknowledged by which he releases his entire interest in said tract of land, said deed to be delivered to the heirs of said M.C. Parsons, upon the execution and delivery to him of a proper deed for said 1165 acres. Said is marked "C".

Your orator will now show your honor that the said M.C. Parsons departed this life intestate, on or about the 17th day of February, 1895, leaving a widow, F.E. Parsons, and the following children his heirs at law to whom his real estate descended, to-wit, Ellen, who



intermarried with J.C.Jessee, Eva, who intermarried with H.J.Russell, George W., Rebecca, and Wheeler P.; that administration was granted of his said estate to the said H.J.Russell and J.C.Jessee, that, as he is informed, said administrators have compensated the said F.E. Parsons for her right of dower in the lands of her said husband and that she has released the same, and has now no interest whatever in any of said real estate.

As has already been shown the dealings between your orator and the said M.C.Parsons was large and complicated, and in addition to the dealings already mentioned there was other large dealings between them running through many years and involving many thousand dollars, which have never been fully settled, though as these latter dealings are in no way connected with the transactions in reference to said tracts of land or either <sup>one</sup> of them, it is not ~~thought~~ to settle them in this suit, unless the defendants should so desire.

Now the object of this bill is to have specifically executed the contract with reference to said 1165 acre tract, or tracts, of land and to have the same conveyed to your orator by proper deed, an account taken of payments made thereon, the amount and the value of the timber taken from the said land, the balance due from your orator, if anything, ascertained; and if this cannot be done then to have specifically executed the contract in reference to said 412 acre tract of land and the same conveyed by proper deed to your orator, an account taken and stated of the dealings between your orator and the said Parsons in reference to said tract and the said Mallett matter, the balance due from the said Parsons thereon to your orator, if anything, and being without adequate remedy at law, your orator prays your honor's court of chancery to take cognizance of his cause and grant him proper relief, and to this end he prays that Ellen Jessee and J.C.Jessee, her husband, Eva Russell and H.J.Russell, her husband, George W.Parsons, Wheeler P.Parsons, Rebecca Parsons, the children and heirs at law of M.C.Parsons, deceased, and J.C.Jessee and H.J. Russell, administrators of said estate, be made parties defendant to this bill, and that they each be required to answer the same but they



need not do so under oath as that is expressly waived, that a guardian ad litem be appointed to answer and defend for Rebecca and Wheeler P. Parsons who are infants, that upon a final hearing said contract for the sale of said 1165 acres of land by the said Parsons in his lifetime to your orator be specifically executed, that if this can not be done, then that the contract in respect to said 412 acre tract be specifically executed, that all proper accounts be directed and taken, and for such other relief both special and general as is suited to his case. May spa. issue &c.

B.H.Sewell and Duncan & Hyatt, Attys.

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Note.--The exhibits mentioned in said bill as being filed therewith marked "A", "B", and "C", do not appear in the files of said cause, at this time.---March 25<sup>th</sup>, 1903.

A.B. Munsey, clerk.  
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And the said defendants having been duly summoned to appear here this day, and not appearing, it is ordered that, unless they do appear here at rules to be held on the last Monday in October, 1895, and answer, demur or plead to the plaintiff's bill, the same will be taken for confessed, and the court will decree accordingly.

At which day, to-wit: at rules held in the clerk's office on Monday, the \_\_\_\_ day of October, 1895, the defendants not appearing to answer, demur or plead to the plaintiff's bill, it is ordered that the same be taken for confessed; and on motion of the plaintiff's counsel, the cause is set for hearing at the next term.

And at another day, to-wit:

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Decree.  
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Virginia,

At a circuit court continued and held for Lee county, at the court-house thereof, on the 15th day of November, 1895.

John L. Pennington,

Plff.

vs.

In Chancery.



Ellen Jessee, et al.

Defts.

This cause came on this the 15th day of November, 1895, to be heard upon the bill of the plaintiff and exhibits therewith, the joint demurrer and answer of J.C.Jessee, Ellen Jessee, H.J.Russell, and Eva Russell, the answer of George W.Parsons, Rebecca Parsons and Wheeler P.Parsons by D.C.Sewell, their guardian ad litem, which answers were this day filed, and general replications, and joinder in said demurrer, and was argued by counsel.

On consideration whereof, said demurrer is overruled, and the court deeming it necessary, it is adjudged, ordered and decreed that George W.Blankenship, who is appointed a commissioner for the purpose do ascertain what contract, if any, was made by and between the said John L.Pennington and M.C.Parsons in his lifetime in regard to the 1165 acres of land known in the cause as the Mallett land, what payments, if any, have been made thereon, and to what extent said contract has been executed by either party. Said commissioner will state and settle the account between the said complainant and M.C.Parsons in reference to the 412 acre tract of land mentioned in said bill, and the collections, if any, made by the said M.C.Parsons on the debt assigned to him by C.E.Mallett, and the balance, if any, due to either of said parties, and whether or not the said 412 acre tract of land has been fully paid for. Said commissioners will report any other facts deemed pertinent by himself or required by any of the parties in interest. Before proceeding to act hereunder said commissioner will give to the parties or their attorneys at least ten days notice of the time and place of his sittings. He will report his actions to the next term of this court, and the cause is continued.

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Answer of J. C. Jessee, and Others.  
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To the Honorable W.T.Miller, Judge of the circuit court of Lee County, Virginia.

The Joint demurrer and answer of J.C.Jessee, Ellen Jessee, H.J.



Russell, Eva Russell and Rebecca Parsons tosa bill filed against them and others by John L. Pennington in this Honorable court;

Respondents say the plffs bill is not good and sufficient in law and of this they pray Judgment of the Court.

But further answering should it be deemed necessary, they say that it is not true that the plff. ever re-purchased the Mallett 1150 acre track back from M.C. Parsons in his lifetime, or that he ever went into possession thereof under any contract of sale or purchase, but if at all only as a tenant or trespasser, nor did he ever surrender to M.C. Parsons 410 acre tract back to M.C. Parsons, but upon the contrary continued up to the present, to use rent and occupy the Wm. A. Parsons tract.

These respondents do not know what kind of a contract it is within the power of the plff. to prove should he be permitted to turn himself loose against a dead mans lands--They do know, however, if makes such proof it will be in the very face, of the plffs solemn deeds and receipts. On the 2nd day of Feb. 1894 the plff. sold to M.C. Parsons the debt held by him on Mallett of \$8820.00 And on that day conveyed each and every interest that he had in said debt or the land on which it was a lien--and on that very day the said Parsons paid every dollar of the purchase money except \$1100.00 to be paid thereafter in corn and hay, which was all fully paid--And the said Pennington acknowledged the full payment of the Mallett debt, in writing which will in due time be filed herewith. While said Pennington held said debt and lien on said land, he had entered into a written contract with the Pocket Coal Company to allow them to market certain timber on said lands and pay to him on said debt one half the proceeds thereof, this contract was cancelled and given up to M.C. Parsons as far back as Oct. 6th, 1894, 8 months after the sale--This contract and the agreement of Henry Nicoll are each herewith filed or will be in due time, as part hereof. The effort now made by the plff in the face of these written contracts to claim that M.C. Parsons owes him \$700. or more discount money on the Mallett land and debt, that \$500.00 of the purchase price is still unpaid, all of which is flatly contradicted by solemn deed & contract



in writing throws some light on his other bold and unfounded pretension. That he bought back the Mallett land and has nearly paid for it, went into the possession of it & put up valuable improvements--Thats his case on paper--He was then & now hard pressed for money and badly in debt if not wholly insolvent, and had nothing to pay and did not pay anything, and he knew that Parsons had sold the timber on the Mallett land to him the plff. and that he agreed to pay and has partly paid \$4.00 per M for that lumber since Parsons death. Not only does he want to say that he purchased the Mallett land by parol, but that he sold the Wm.A.Parsons land back by parol--Thus making two contracts as he claims by Parol--against the Statute of Frauds & Perjuries which these defendants here invoke as a protection; and wise it is that there is such law otherwise, the lands & homes of dead men would be at the mercy of the frail memory of man--designing men at that-- These respondents say that it is true the said Pennington has been upon the Mallett land under what he claimed was a parol contract with M.C.Parsons for the poplar timber and as these respondents thought \$4.00 per M was a reasonable price for the timber they did not object, but they did not then nor now believe the plff. ever had any such contract--They have filed a bill in this Hon.court in reference to said timber and lumber reference to which is here made as to their view in that matter. They therefore deny any contract of sale by M.C.Parsons to John L.Pennington for the Mallett land or for the exchange of the Wm.A.Parsons land, or that J.L.Pennington ever paid anything on the same or took possession of it under any such contract in the lifetime of M.C.Parsons or since that time. They do not deem it necessary to go over the plffs lengthy & confused detail of the sale of the Mallett land & note, it is not necessary or material--The question can only rest on the allegations "That he bought it back, has nearly paid for it in the exchange of the Wm.A.Parsons land & otherwise". This these respondents positively deny. They are advised however, that as the plff.admits the contract was not in writing that such sale is void in law and that their demurrer should be sustained. They deny each & every allegation of the plffs bill not herein admitted. And having



now fully answered they pray to be dismissed with their costs.

Pridemore & Sewell,

for Defts. Adults.

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Answer of Guardian Ad Litem for Infants.  
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To the Honorable W.T. Miller, Judge of the circuit court of Lee County, Virginia:

The joint and separate answer of Geo. W. Parsons, Rebecca Parsons, and Wheeler P. Parsons, infants under the age of 21 years, by D.C. Sewell, their Guardian ad Litem, assigned to defend them in a bill of complaint exhibited against them & others by John L. Pennington in the Circuit Court of Lee County, Virginia.

The respondents reserving to themselves all just exception to the said Bill, for answer thereto, or so much thereof as they are advised that it is material for them to answer by their said Guardian ad litem, answering they say:

That they are infants of tender years, and by reason of the same, are incapable of understanding, or taking care of their rights and interests. They therefore by their said Guardian ad Litem commend themselves and their rights and interests into the protection of the court and pray that no decree may be entered against them, which will in the least tend to their prejudice.

And having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended, & they will ever pray &c.,

George W. Parsons, Wheeler P. Parsons, Rebecca Parsons,  
by D.C. Sewell, Guard. ad Litem.

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And at another day, to-wit:  
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Decree.  
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Virginia,



At a circuit court continued and held for Lee county, at the court-house thereof, on the 5th day of November, 1896.

M.C. Parsons' Admrs.

Plaintiffs.

vs.

In Chancery.

J.L. Pennington,

Defendant.

and.

J.L. Pennington,

Plaintiff.

vs.

In Chancery.

Ellen Jessee, et als.

Defendants.

On motion of the plaintiffs in each of the above styled causes they are brought on to be heard together. And thereupon said causes coming on together to be heard upon the papers formerly read in each of said causes, and the report of G.W. Blankenship in the second above styled cause, and there being no exceptions to said report it is confirmed. And it being suggested to the court that the matters and things involved in said two causes, together with the matters involved in an account filed by the said J.L. Pennington, plaintiff in the second above styled cause, *filed in the case of R.L. Pennington* ~~Admr. vs. Russell & Jessee, Admr. et al.~~ *Admr. vs. Russell & Jessee, Admr. et al.*, had been amicably settled and adjusted by and with the consent of all the adult parties interested in said matters, and with the approval of the court as to the interests of the said infant defendants, it is adjudged, ordered and decreed that the first above styled cause be and the same is hereby dismissed. And with like consent and approval, it is adjudged, ordered and decreed that J.L. Pennington take and hold the tract or tracts of land composing the 1165 acres of land known as the Mallett land, and more particularly described in the deed of the Pocket Coal Company to M.C. Parsons, dated the 28th day of December, 1894, and R.L. Pennington, who is appointed a commissioner for the purpose will convey said tract or tracts of land to said John L. Pennington with covenants of special warranty, reserving thereon a lien for \$1500.00 and interest thereon from June 1st, 1896, the amount hereinafter decreed to be paid by the said John L. Pennington to H.J. Russell and J.C. Jessee, administrators of the estate of M.C. Parsons, deceased. And it is



further adjudged, ordered and decreed that the said John L. Pennington pay to the said H. J. Russell and J. C. Jessee, administrators as aforesaid the aforesaid sum within one, two, three & four years from June 1st, 1896, with interest, the sum of fifteen hundred dollars, for which said sum the said Pennington shall execute to said administrators his said bonds three for \$400.00 each and one for \$300.00, bearing interest from June 1st, 1896, and payable in one, two, three and four years from said date, which said sums are declared to be a lien on said tract of land aforesaid, known as the Mallett land. And it is further adjudged, ordered and decreed that the said Pennington withdraw the account filed by him before commissioner A. M. Goins in the chancery cause of R. L. Pennington, Admr. &c. vs. H. J. Russell & J. C. Jessee Admrs. &c. et al., and mark the same as fully satisfied. It is further adjudged, ordered and decreed that the said John L. Pennington, together with his wife, make and execute a deed of release and conveyance, with covenants of special warranty, of the 412 acres W. A. Parsons tract of land to the heirs at law of M. C. Parsons, deceased. This decree fully settles and adjusts all matters of dealings and disputes between the said J. L. Pennington and the Administrators, heirs and estate of M. C. Parsons, deceased, involved in said two suits and the account filed before commissioner Goins, as aforesaid. And it is further adjudged, ordered and decreed that J. L. Pennington pay the costs in the accounts before Goins and the second styled cause, and that the plaintiff pay the costs of the first, ~~above styled cause~~ party pay the costs severally incurred by him or them in any of the matters herein settled. And the first above styled cause is stricken from the docket, and the second above named cause is retained for the purpose of enforcing the conveyances herein provided for, and the collection of the three notes above required to be given, and it is therefore continued.



Virginia,

Circuit Court of Lee County,

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J.L.Pennington, Plaintiff.

Against ( In Chancery. (Commissioner's Report.)

Ellen Jessee, et als., Defendants.  
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To the Hon.W.TMiller, Judge of said Court:--

Your undersigned commissioner in this cause respectfully reports that from the evidence and statements of parties and their counsel before him, he finds that the best mode of settlement would be, that the plaintiff keep and hold the Mallett land and that he release the Willaim A.Parsons land by a proper deed executed by himself and wife, and that he pay to the administrators of M.C.Parsons, deceased, \$1500.00 with interest from June 1st, 1896, payable in four annual installments, the first three of \$400.00 each the last \$300.00, and that this shall settle all accounts between the parties. And that the said sum of \$1500.00 shall be and remain a lien upon the Mallett land until paid, and the said land to be conveyed with said lien retained thereon. Your commissioner reports the above as a fair and reasonable settlement of the matters in controversy and respectfully recommends its confirmation.

This October 20, 1896.

Respectfully,

George W.Blankenship,

Special Commissioner.

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And at another day, to-wit:

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Decree.  
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Virginia,

At a circuit court continued and held for Lee county, at the court-house thereof, on the 15th day of June, 1897.



J.L.Pennington,

Complainant.

vs.

In Chancery.

Ellen Jessee, et al.

Defendants.

This cause came on this day to be heard upon the papers formerly read therein and the report of special commissioner R.L.Pennington who was directed to make a deed to J.L.Pennington for the 1165 acre tract of land, and was argued by counsel. Upon consideration of all which and for reasons appearing to the court it is adjudged ordered and decreed that the said report, the same being unexcepted to, be and the same is hereby confirmed, and the deed therein reported is hereby confirmed. And the said Russell & Jessee, Admrs. of M.C.Parsons, ~~decd.~~, will pay to the said R.L.Pennington Commissioner the sum of \$5.00 for making and executing the said deed, and the clerk of this court upon the execution of the bonds for the payment of the vendor's lien retained therein, as directed by decree of November, 1896, entered in this cause, payable to the said Russell and Jessee administrators, will deliver to the said J.L.Pennington the said deed to the said land, made by said Pennington. And this cause is continued.

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Report of R.L.Pennington, Commissioner.  
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To the Honorable W.T.Miller, Judge of the circuit court for Lee County, Virginia:

The undersigned in obedience to an order entered on the 15th day of November, 1897, in the chancery causes of Russell and Jessee Admrs. vs. J.L.Pennington, and J.L.Pennington vs. Ellen Jessee et al. was directed to make a deed to J.L.Pennington to the land known in the proceedings of the said case as the 1165 acre tract, and in compliance to said order your undersigned commissioner has proceeded to execute the said deed which is herewith,

Respectfully submitted,

Robt.L.Pennington,

Special Commissioner.  
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Deed Filed with Said Report.

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This deed made and entered into this the 15th day of June, 1897, by and between R.L. Pennington, Commissioner, party of the first part, and J.L. Pennington, party of the second part.

Whereas, by a decree rendered in the chancery cause of J.L. Pennington vs. Ellen Jessee et al. on the 5th day of November, 1897, the said R.L. Pennington was directed to make and execute a deed to J.L. Pennington with covenants of special warranty conveying to him the 1165 acre tract which the said J.L. Pennington sold to C.E. Mallett, and which was sold by the said Mallett to the Pocket Coal Co. and by the them conveyed to the estate of M.C. Parsons, reserving in the said deed to be executed, a vendor's lien for the sum of \$1500.00 with interest thereon from the 1st day of June, 1896, to be paid by the said J.L. Pennington to J.C. Jessee and H.J. Russell administrators of the estate of M.C. Parsons, deceased, \$400.00 of said sum with interest from the first day of June, 1896, payable Nov. 1, 1897, \$400.00 payable Nov. 5, 1898, with interest from June 1st, 1896, \$400.00 payable November 5th, 1899, with interest from the 1st day of June, 1896, and \$300.00 payable November 5th, 1900, with interest from 1st day of June, 1896:

Now, therefore, this deed witnesseth, that for and in consideration of the premises, and in obedience to the said decretal order of the 5th day of November, 1897, the said R.L. Pennington, commissioner as aforesaid, doth hereby grant and convey unto the said J.L. Pennington the said 1165 acre tract of land hereinbefore described with covenants of special warranty, reserving for the benefit of said Russell and Jessee, Admsrs. a vendor's lien for the said sum of \$1500.00, with interest from the 1st day of June, 1896, to be paid as hereinbefore set forth. To have and to hold the said tract of land unto the said J.L. Pennington, and his heirs and assigns forever. Witness the following signature and seals, the day and year first above written.

Robt. L. Pennington, Seal.

Virginia, Lee County, to-wit:

I, S.V.F. Richmond, clerk of the county court for Lee county, and



state aforesaid, do hereby certify that R.L. Pennington, whose name is signed to the foregoing writing bearing date on the 15th day of June, 1897, this day personally appeared before me and acknowledged the same, in my county and state aforesaid.

Given under my hand and seal this the 24th day of Nove. 1897.

\_\_\_\_\_, Clerk.

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And now at this day, to wit:

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Decree Final.  
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Virginia,

At a circuit court continued and held for Lee county, at the court-house thereof, on the 11th day of June, 1900.

John L. Pennington,

Complt.

--vs.

In Chancery.

Ellen Jessee & al.

Defts.

This cause came on this day to be heard upon the papers formerly read therein, and the motion of the defendants' counsel to have said cause stricken from the docket, and counsel for plaintiff not objecting, the said cause is stricken from the docket.

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Virginia, Lee County, to-wit:

I, A.B. Munsey, clerk of the circuit court for the county aforesaid in the State of Virginia, do certify that the foregoing is a true transcript of the record and proceedings in a certain suit in chancery lately depending in said court between John L. Pennington, plaintiff, and Ellen Jessee, et al., defendants, with all things touching the same, as fully and wholly as they now exist among the records of my office.

Given under my hand this the 25<sup>th</sup> day of March, 1903.

A.B. Munsey, clerk.



~~~~~  
Wm Pennington
vs { In Chancery
Chas. E. Mallett, et al.
~~~~~

"Exhibit No. 6."  
Clerk \$5.00  
~~~~~

~~~~~  
J. L. Pennington,  
vs { Transcript  
of Record.  
Ellen Jesse, et al.  
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This Deed made and entered into on this the 22nd day of February, in the year of our Lord nineteen hundred and two, by and between John L. Pennington and Fannie E. Pennington, his wife, parties of the first part, and Ellen Jessee, Eva Russell, George W. Parsons, Rebecca Wampler, Wheeler P. Parsons and Bessie A. Parsons, children and heirs at law of M. C. Parsons, deceased, parties of the second part:

Witnesseth; Whereas the said John L. Pennington, at the second October rules, 1895, filed his bill in equity in the Circuit Court for the County of Lee, against the said Ellen Jessee and others, the object of which was to have enforced specifically a parol sale or swap of land therein fully set out; and whereas, by a decree entered in the said cause and another cause brought on to be heard therewith entitled M. C. Parsons Admrs. vs. J. L. Pennington, Dated November 5th, 1895, it was among other things adjudged, ordered and decreed that the said John L. Pennington together with his wife, make and execute a deed of release and conveyance with covenants of special warranty, of the 412 acre ~~W. A.~~ Parsons tract of land to the heirs at law of M. C. Parsons, deceased;

Now therefore in consideration of the premises in obedience to the said order of the court and in further consideration of a conveyance to the said John L. Pennington of the 1165 acre tract of land described in said causes by R. L. Pennington Commissioner on the part of the said heirs of the said M. C. Parsons, deceased, the receipt whereof is hereby acknowledged, the said John L. Pennington and Fannie E. Pennington his wife, do hereby grant, bargain, sell release and convey unto the said parties of the second part, with special warranty, the said 412 acre W. A. Parsons tract of land, lying and being in the said County of Lee in the Rocky Station Magisterial District, on the waters of Straight Creek in that section called the "Pocket", and bounded and further described as follows, to-wit:

Beginning at a poplar on Straight creek and running thence S. $51\frac{1}{2}$ W. 16 poles; thence up and with a ridge N. 39 W. 15 poles to a white oak sapling N. 25 W. $24\frac{1}{2}$ poles, N. $58\frac{3}{4}$ W. $20\frac{1}{2}$ poles, N. $61\frac{1}{2}$ W. $9\frac{1}{2}$ poles,

N. 61 W.15 poles, N.45 $\frac{1}{2}$ W.8 $\frac{1}{2}$ poles, N.64 $\frac{1}{2}$ W.18 poles, S.88 $\frac{3}{4}$ W.12 poles, N.64 $\frac{3}{4}$ W.17 poles, N.42 W.2 $\frac{1}{2}$ poles, N.75.E.26 poles to a small white walnut, N.1 E.51 poles to a chestnut and oak on top of a ridge, and with the same N.89 W.10 poles, S.84 $\frac{1}{2}$ W.15 poles N.77 W.13 $\frac{1}{2}$ poles, S.72 W.12 poles, N.80 W.14 poles, S.78 $\frac{1}{2}$ W.8 poles, N.88 W.22 poles *go* six chestnut oaks, N.40 $\frac{1}{2}$ W.19 poles to a white oak, N.33 $\frac{1}{2}$ W.10 $\frac{1}{2}$ poles, N.7 $\frac{1}{2}$ W.6 $\frac{1}{2}$ poles, N.1 E.22 poles, N.31 E.11 poles to a black oak N.25 $\frac{1}{2}$ W.28 poles, N.1 $\frac{1}{2}$ E.6 poles, N.10 $\frac{1}{2}$ E.16 $\frac{1}{2}$ poles, N.16 W.12 poles, N.27 $\frac{3}{4}$ W.29 poles, N.20 $\frac{1}{2}$ E.24 poles, N.27 W.14 poles, N.3 $\frac{1}{2}$ W.11 poles, N. $\frac{3}{4}$ W.13 poles, N.37 W.22 $\frac{1}{2}$ poles, N.11 W. 13 $\frac{1}{2}$ poles to a bunch of red oak, N.5 $\frac{1}{2}$ E.5 $\frac{3}{4}$ poles, to four hickories and chestnut; thence leaving the ridge S.88 $\frac{1}{2}$ E.234 poles to the top of the leading ridge between Ben-
edict's branch and Millers cove, thence with said ridge S.10 $\frac{1}{2}$ W.20 poles to hornbeam and spanish oak widow Carter's corner, S.13 $\frac{1}{2}$ E.11 poles S. 1 E.36 poles, S.28 E 20 poles, S.10 $\frac{1}{2}$ W.12 $\frac{1}{2}$ poles, S.3 $\frac{1}{2}$ W.32 poles, S.8 E.17 poles, S.10 W.11 $\frac{1}{2}$ poles, S.15 E.12 poles, S.33 E.22 poles, S.54 E.5 $\frac{1}{2}$ poles, S.68 E.25 poles, S.21 E.30 poles, S.4 E.18 poles to a ^polar on a branch, and down the branch and Straight creek, S.57 W.8 poles, S.14 $\frac{1}{2}$ E.14 $\frac{1}{2}$ poles to a corner in the mouth of a hollow, S.31 $\frac{1}{2}$ E. 18 poles, S.47 $\frac{1}{2}$ W.11 $\frac{1}{2}$ poles, S.18 $\frac{1}{2}$ E.9 poles, S.59 $\frac{3}{4}$ W.48 poles, S.6 $\frac{1}{2}$ W.24 poles to the beginning, containing 412 acres. To have and to hold the said tract or parcel of land unto the said parties of the second part, their heirs *and* assigns forever.

Witness the following signatures and seals.

J. L. Pennington, (Seal.)

Fannie E. Pennington, (Seal.)

Virginia, Lee County, to-wit:

I, A.G. Hyatt, a Notary Public for the county aforesaid, in the State of Virginia, do hereby certify that John L. Pennington and Fannie E. Pennington, whose names are signed to the foregoing writing bearing date the 22nd day of February 1902, have each acknowledged the same before me in my county aforesaid.

Given under my hand this 24 day of February, 1902.

A. G. Hyatt, N.P.

Virginia, Lee County, to-wit:

In the Office of the clerk of the County Court for said County,
the 24th day of February, 1902. This deed was presented, and together
with the certificate thereto annexed, admitted to record. X

Teste: B.M.Morgan, Clerk.

A copy, Teste: B.M.Morgan, clerk.
(D.B.38, page 319.&c.)

Wm Pennington
vs { In Chancery.
Chas. E. Mallett et al.

"Exhibit No. 7."

J. L. Pennington, et ux
Do { Deed.
Ellen Jesse, et al.

-I-

This deed made this 14th day of March, 1900, between Robt. L. Pennington, Special Commissioner, as hereinafter set forth, party of the first part, and A.H. Ely, of the County of Lee, State of Virginia, party of the second part:

Whereas by a decree of the circuit court of the County of Lee entered on the 10th day of December, 1897, in the Chancery cause entitled Greer Machinery Co. vs. J. D. Pennington, et al. therein depending it was, among other things, adjudged, ordered and decreed that Robt. L. Pennington who was thereby appointed Special Commissioner for the purpose shall sell by public auction, after certain advertisement, and upon certain terms in the said decree fully set forth, certain real estate therein described; and

Whereas the said Robt. L. Pennington pursuant to the said decree, did on the 17th day of January, 1898, after having duly advertised the same in accordance with the terms of the said decree, offer for sale by private biddings, the following described real estate, to-wit: a tract of land situated in the Pocket containing 487 acres & bounded as follows, to-wit: Beginning on the top of Lone mountain at 2 maples, black gum and white oak marked with a knife (on the dowery line) thence running a straight line from the top of Lone Mt. crossing Straight creek to the top of Bradley's ridge, southwardly direction to a Spanish oak & white oak near the top of said ridge, marked with a knife, thence with the top of the said ridge near the top of a small mound on the top of Bradley's ridge to 5 sourwoods, 1 hickory, 1 red oak & 1 wahoo also marked with a knife, thence north westwardly to a black gum near the McCrady line on top of a spur of aforesaid, then running *due north to a poplar, corner of M^cCrady line* with the McCrady line & also dower of Mourning Andis thence with dower *to top of Lone mountain, thence with dower line* line of Mourning Andis to the Beginning.

At which sale the said A.H. Ely made the last and highest bid therefor, and became the purchaser thereof at the price of Six Hundred & Seventeen dollars; and

Whereas the said sale was duly reported to the court by the said Special Commissioner, and was, by another decree, entered in the said cause on the 16th day of June, 1898, by the said court, approved and

confirmed; and

Whereas the said A.H.Ely hath paid the whole of the said purchase money, which payment was duly reported to the said court; and whereupon by another decree entered in the said cause on the 14th day of March, 1900, the said Robt.L.Pennington was appointed a special commissioner to execute and deliver to the said A.H.Ely a good and sufficient deed with special warranty conveying the said real estate to the said A.H.Ely, in fee simple:

Now, therefore, this deed witnesseth, That for and in consideration of the premises and in obedience to the said last mentioned decree, the said Robt.L.Pennington Special Commissioner as aforesaid, do grant unto the said A.H.Ely with special warranty the real estate hereinbefore fully described.

Witness the following signature and seal.

Robt. L. Pennington, (Seal.)

State of Virginia, County, of Lee, to-wit:

I, B.M.Morgan, clerk of the County court for the County aforesaid, in the State of Virginia, do certify that Robt.L.Pennington whose name is signed to the writing hereto annexed, bearing date on the 14th day of March 1900, has acknowledged the same before me in my county aforesaid. Given under my hand this 14th day of March, 1900.

B. M. Morgan, clerk.

In the County Court Clerk's Office of the county of Lee, the 14th day of March, 1900. This deed was this day presented to me in my said office, and with the certificate annexed, admitted to record at 4 o'clock, P.M.

Teste: B.M.Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B.36, p.7.)

Wm Pennington
vs. { In Chancery.
Chas. E. Mallett, Att.

"Exhibit No. 8."

R. L. Pennington, Comr.
To { Deed.
(1)
A. H. Ely.

\$617.00
112.00
371.71-
\$1100.71-

L. T. HYATT,
ATTORNEY AT LAW,
JONESVILLE, VIRGINIA.

This deed made this the 8th day of March, 1901, by R.L. Pennington, Special Commissioner as hereinafter set forth, party of the first part, and A.H. Ely, of Lee County, Virginia, party of the second part:

Whereas by a decree of the circuit court for Lee county, entered on the 10th day of December, 1897, in the chancery cause of the Greer Machinery Company vs. J. D. Pennington et al. therein depending, it was, among other things, adjudged, ordered and decreed that R.L. Pennington who was thereby appointed a special commissioner for the purpose shall sell by public auction, after certain advertisement and upon certain terms in the said decree fully set forth certain real estate therein mentioned; and

Whereas the said R.L. Pennington, pursuant to the said decree, did on the 17th day of January, 1898, after having duly advertised the same in accordance with the terms of the said decree, offer for sale by private biddings the following real estate lying and being in Lee County in the Pocket Country on the waters of Straight Creek, and which according to a survey heretofore made by C.C. Elliott is bounded as follows: Beginning on two maples, white oak and black gum on the top of Lone Mountain in a flat, the Pennington corner, thence N. $30\frac{1}{4}$ E. 42 poles to a chestnut oak on top of a high point, N. $11\frac{1}{4}$ W. 38 p. to three chestnut sprouts, on a high point, N. $33\frac{1}{4}$ W. 7 p. to a chestnut oak on a point, N. $80\frac{1}{2}$ W. $14\frac{3}{4}$ p. to a black oak in a flat, S. $65\frac{3}{4}$ W. 17 p. to a hickory, H.A.L. Maness' corner, and with his lines N. $53\frac{1}{4}$ W. 73 p. crossing Meadow branch to a white oak and rock near the top of a spur, S. 74 W. 8 poles to a chestnut stub, N. $12\frac{3}{4}$ W. 28 p. to a white oak stub on a point, N. $38\frac{1}{4}$ E. 20 p. on top of a high point, N. 10 W. $17\frac{3}{4}$ p. to a white oak and dogwood in a low place in the ridge, N. 20 E. $18\frac{3}{4}$ p. to a red oak stub on a point, N. $38\frac{1}{4}$ E. $27\frac{3}{4}$ p. to a chestnut and service on the side of a spur, thence leaving the spur on ridge and said Maness line N. 47 W. 54 p. to a spruce pine, hickory and double ash (pine now down) on the south bank of Straight creek, thence up and with said creek N. 16 W. 25 p. blow and near the old Parsons mill dam, thence leaving the creek N. $77\frac{3}{4}$ W. $38\frac{1}{2}$ p. to a white oak stub and ser-

vice on top of a high point N. $42\frac{1}{2}$ W. 14 p. to a black oak on top of the ridge, N. 12 W. $72\frac{1}{2}$ p. to a chestnut oak on top of a ridge, N. $22\frac{1}{4}$ W. 30 p. to a stake, chestnut marked as pointer, N. $36\frac{1}{4}$ W. 11 p. to a stake in D.S. Reasor's line, a double oak, marked as a pointer, and with his line, S. 53 W. 173 p. to a poplar in the McCrady line & corner, S. $38\frac{1}{2}$ W. $9\frac{3}{4}$ p. to a stake on the top of the ridge near a marked chestnut, S. 6. E. 7 p. to a chestnut & stake, S. $20\frac{1}{2}$ W. 19 p. to two black oaks, S. $19\frac{1}{2}$ E. 10 p., S. $16\frac{1}{2}$ W. $10\frac{3}{4}$ p. to two chestnuts, S. $37\frac{1}{2}$ W. $15\frac{1}{8}$ p. to two gums, S. $7\frac{3}{4}$ E. 25 p. to three black oak~~s~~ saplings, S. 11 E. 19 p. S. 64 E. $11\frac{1}{4}$ p. to a gum, S. $86\frac{1}{2}$ E. 15 p. to a service, S. 56 E. $29\frac{1}{2}$ p. to a gum, S. $52\frac{3}{4}$ E. 18 p. to a stake, S. 58 E. 15 p. to a white oak, S. 32 E. 18 p. to a black oak, S. $58\frac{1}{2}$ E. 18 p. to a gum & rock, N. 60 E. $13\frac{1}{2}$ p. to a to a stake in the McCree~~dy~~ line & with it S. $30\frac{3}{4}$ E. 75 p. to a white oak, beech and maple, S. 69 E. $26\frac{3}{4}$ p. to two maple saplings on the side of a ridge, S. 89 E. $6\frac{1}{2}$ p. to four sourwoods, hickory & cucumber on a high point, S. 20 E. $7\frac{1}{2}$ p. S. $49\frac{1}{2}$ E. $39\frac{1}{2}$ p. to a red oak and white oak pointers, S. $33\frac{1}{4}$ E. $18\frac{1}{4}$ poles to a white oak and red oak near the top of the ridge, N. $71\frac{1}{2}$ E. 100 poles to the beginning and containing 448 acres more or less; and at which sale the said A.H. Ely made the last and highest bid, and became the purchaser thereof at Six hundred and seventeel (\$617.00) dollars; and

Whereas the said sale was duly reported to the court by the said R.L. Pennington and was by another decree entered in said cause, on the 16th day of June, 1898, by the said court approved and confirmed; and,

Whereas the said A.H. Ely hath paid the whole of the purchase money, which payment was duly reported to the said court and whereupon by another decree entered in said cause on the 14th day of March, 1900, the said R.L. Pennington was appointed a Special Commissioner to execute and deliver to said A.H. Ely a deed with special warranty conveying said real estate to said A.H. Ely in fee simple; and

Whereas on the 14th day of March, 1900, the said R.L. Pennington did make said A.H. Ely a deed intending to convey the land above described by meets and bounds, to him, but it has been discovered recently

that said deed does not cover all of said land:

Now, therefore, This Deed Witnesseth that for and in consideration of the said premises and in obedience to said last mentioned decree the said R.L.Pennington, Special Commissioner as aforesaid, doth hereby grant and convey unto said A.H.Ely with covenants of special warranty, the real estate hereinbefore fully described.

Witness the following signature and seal, the day and year first above written.

Robt. L. Pennington, (Seal.)

Virginia, Lee County, to-wit:

I, B.M.Morgan, clerk of the county court in and for the county and state aforesaid, do hereby certify that R.L.Pennington whose name is signed to the writing above bearing date on the 8th day of March, 1901, has acknowledged the same before me in my county aforesaid.

Given under my hand this the 8th day of March, 1901.

B. M. Morgan, clerk.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County court for said county, the 8th day of March, 1901, this deed was presented and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.E.No.37, page 250.&c.)

W^m Pennington
vs { In Chancery.
Chas. E. Mallett, et al.

"^{Ex}hibit No. 9."

R. L. Pennington, Counr.
To { Deed.
A. H. Ely.

This Deed, made this 12th day of Nov. 1900, between Robt. L. Pennington, Special Commissioner, as hereinafter set forth, party of the first part, and L. M. Zion, of the County of Lee, State of Virginia, party of the second part:

Whereas by a decree of the Circuit Court of the County of Lee entered on the 17th day of Nov. 1897, in the chancery cause entitled Greer Machinery Co. vs. J. D. Pennington et al., therein depending, it was, among other things, adjudged, ordered and decreed that R. L. Pennington, who was thereby appointed Special Commissioner for the purpose, shall sell by public auction, or by private sale, after certain advertisement, and upon certain terms in the said decree fully set forth, certain real estate therein described; and

Whereas the said Robt. L. Pennington, pursuant to the said decree, did, on the 17th day of Feb'y 1898, after having duly advertised the same in accordance with the terms of the said decree, offer for sale by private biddings the following described real estate, to-wit: About 90 acres out of the J. L. Pennington 1165 acre tract, & bounded as follows, to-wit: Beginning at a poplar in the mouth of the Coal Bank Hollow on Pucket's creek near the upper end of bottom field, eastwardly to the top of a ridge to a coner on the top of said ridge on a line of C. D. Russell & I. Pennington's, then up & with said ridge as it meanders to another comr. of same parties, & then up and with said Ridge to a grave yard, on top of said ridge, thence S. Westwardly down & with the top of the said ridge to Pucket's creek & thence down said creek to the beginning; At which said sale the said L. M. Zion became the purchaser at the price of \$112.00: and

Whereas, the said R. L. Pennington, on the 20th day of March, 1898, offered and made private sale of another tract of land, to-wit: a certain tract situated in the Poor Valley & being the same lot of land that was sold & conveyed by Wm. Pennington to J. D. Pennington by deed bearing date the 22nd day of Feby. 1890, and on Record in the office of the clerk of the county court of Lee County, & which tract, according to said deed contains 165 acres, to which reference is here made for a full description thereof. At which sale the said L. M. Zion

became the purchaser thereof at the price of One Hundred and Sixty-Five dollars: and

Whereas the said sales were duly reported to the Court by the said Special Commissioner, and was by another decree, entered in the said cause on the 16th day of June, 1898, by the said Court, approved and confirmed; and

Whereas the said L.M.Zion hath paid the whole of the said purchase money, which payment was duly recorted to the said Court; and whereupon by another decree, entered by the said court in the said cause on the 12th day of Nov.1900, the said Robt.L.Pennington was appointed Special Commissioner to execute and deliver to the said L.M.Zion a good and sufficient deed, with special warranty, conveying the said real estate to him in fee simple:

Now, therefore, this Deed Witnesseth, That for and in consideration of the premises, and in obedience to the said last mentioned decree, the said Robt.L.Pennington, Special Commissioner as aforesaid, do grant unto the said L.M.Zion with special warranty, the real estate hereinbefore fully described.

Witness the following signature and seal.

Robt. L. Pennington, (Seal.)

State of Virginia, County of Lee, to-wit:

I, B.M.Morgan, Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that Robt.L.Pennington whose name is signed to the writing hereto annexed, bearing date on the 12 day of Nov. 1900, hath acknowledged the same before me in my County aforesaid.

Given under my hand this 12 day of Nov.1900.

B. M. Morgan, clerk.

Virginia, Lee County, to-wit:

In the County Court Clerk's Office of the County of Lee, the 2nd day of February, 1901. This deed, being duly stamped, was this day presented to me in my said office, and, with the certificate annexed, admitted to record at 1 o'clock, P.M.

Teste: B. M. Morgan, clerk.

A copy, (D.B.37,p.149.), Teste: *B. M. Morgan*, clerk.

Wm Pennington
vs. { In Chancery.
Chas E. Mallett, et al.

"Exhibit No. 10."

R. L. Pennington, Counr.
Do { In Deed.
L. M. Zion.

6 112

This deed made and entered into this the 5th day of March 1901, between Robt.L.Pennington, Commissioner as hereinafter set forth, party of the first part, and W.L.Eldridge of the County of Lee and State of Virginia, party of the second part:

Whereas by a decree of the circuit court for the County of Lee, entered on the 10th day of November, 1897, in the chancery cause entitled Greer Machinery Co. vs. J.D.Pennington et al., therein depending, it was, among other things, adjudged, ordered and decreed that Robt.L.Pennington, who was thereby appointed a special commissioner for the purpose, shall sell at public auction, or by private sale, after certain advertisement and upon certain terms in the said decree fully set forth, certain real estate therein described; and

Whereas the said Robt. L. Pennington, pursuant to the decree, did on the 17th day of February, 1898, by private sale, after having duly advertised the same in accordance with the terms of the said decree, offer for sale privately the following described real estate, to-wit: A tract of land situated on the waters of Pucket's creek in the pocket as the property of J.L.Pennington and which is bounded as follows:

Beginning on a poplar thence S.38 W.150 poles, N.41 W.13 $\frac{1}{2}$ poles, N. 24 $\frac{1}{2}$ W. 11 poles, N. 3 $\frac{1}{2}$ E 24 poles, N. 21 W. 50 poles, N. 2 $\frac{1}{2}$ E. 19 poles, N. 44 $\frac{1}{2}$ W. 10 poles, N. 12 $\frac{1}{2}$ E. 19 poles, N.32 $\frac{1}{2}$ W.16 poles, N. 50 W. 35 poles, N. 13 $\frac{1}{2}$ E. 19 poles, N. 44 $\frac{1}{2}$ W. 28 poles, North 34 poles, N. 26 W. 29 poles, N. 51 W. 12 $\frac{1}{2}$ poles, N. 86 W. 16 poles, N. 27 W. 29 poles, N. 63 W. 20 poles to a small chestnut and three oaks, N. 47 E. 26 poles, N. 69 $\frac{1}{2}$ E. 14 poles, N. 49 $\frac{1}{2}$ E. 16 poles, S. 82 $\frac{1}{2}$ E. 12 $\frac{1}{2}$ poles, S. 69 $\frac{1}{2}$ E. 27 poles, S. 36 $\frac{1}{2}$ W. 8 $\frac{1}{2}$ poles, S. 46 $\frac{1}{2}$ E. 20 poles, S. 86 $\frac{1}{2}$ E. 36 poles to a chestnut oak on a high point, N. 10 W. 14 poles, N. 61 E. 26 poles, N.76 $\frac{1}{2}$ E. ~~228~~ 26 poles, S. 82 E. 10 $\frac{1}{2}$ poles to a stake in the McCrady line, S. 3 $\frac{1}{2}$ W.226 poles to the beginning, containing 252 acres be the same more or less. See D.B.27,p.570.

At which sale A.N.Pennington gave the best price and became the purchaser thereof at the price of \$504.00, and

Whereas the said sale was duly reported to the court by said

Special Commissioner and by another decree rendered in said cause on the 16th day of June, 1898, said sale was approved and confirmed; and

Whereas the said A.N.Pennington, purchaser as aforesaid, had failed to pay the second deferred payment of \$150.00 which fell due on the 17th day of February 1900, with its interest thereon, he appeared in court at the November term 1900, and agreed that said land should be resold to pay the said amount that was then owing on said deferred payment as well as the cost of a judgment at law which had been rendered thereon; and

And whereas by a decree rendered in the said cause at the said November term, 1900, it was adjudged that said land should be resold by said commissioner R.L.Pennington after certain advertisement to pay said deferred payment as aforesaid subject to the lien of a like note of \$150.00 which should fall due February 17, 1901, with interest thereon from the 17th day of February 1898; and

Whereas the said Robert L.Pennington Commissioner as aforesaid, pursuant to the said decree did on the 21st day of January, 1901, after having duly advertised the same in accordance with the said decree, offer said land by public outcry to the highest bidder, subject to the lien of said undue purchase moneym at which said sale said W.L.Eldridge became the purchaser at the price of \$195.00, and was to pay the undue note amounting to the sum of \$176.75; and

Whereas said sale to said Eldridge was duly reported to Court by said Special Commissioner and was by another decree rendered in said cause on the 5th day of March, 1901, duly approved and confirmed by the court; and

Whereas the said W.L.Eldridge hath paid both the amount of his said bid as well as the payment due to A.N.Pennington, Feb'y 17th, 1901, which payment was duly reported to court; and whereupon by another decree entered in the said cause on the 5th day of March, 1901, the said Robt.L.Pennington was appointed a special commissioner to execute and deliver to the said W.L.Eldridge a good and sufficient deed with covenants of special warranty conveying the said real estate to the said W.L.Eldridge in fee simple:

Now therefore this deed witnesseth that for and in consideration of the premises and in obedience to the said last mentioned decree, the said Robt.L.Pennington, special commissioner as aforesaid, doth grant unto the said W.L.Eldridge with special warranty the real estate hereinbefore fully described.

Witness the following signature and seal.

Robt.L . Pennington. (Seal.)

Virginia, Lee County, to-wit:

I, B.M.Morgan, clerk of the county court for Lee county, in the State aforesaid, do hereby certify that Robt.L.Pennington, whose name is signed to the foregoing writing bearing date the 5th day of November 1901, this day acknowledged the same before me in my county aforesaid.

Given under my hand this the 5th day of March, 1901.

B. M. Morgan, clerk.

Virginia, Lee County, to-wit:

In the office of the clerk of the county court for said county, the 6th day of March, 1901, this deed being properly stamped, was presented and with the certificate thereto annexed, admitted to record.

Teste: B.M.Morgan , clerk.

A copy, Teste: B. M. Morgan , clerk.

(D.B.No.37, page 236 &c.)


~~~~~  
Wm Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al.

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"Exhibit No. 11"

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R. L. Pennington, Comr.  
To. { Deed.  
W. L. Eldridge

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195  
136.75  
112.25  
22.50

L. T. HYATT,  
ATTORNEY AT LAW,  
JONESVILLE, VIRGINIA.



This deed made this made the 29th day of January A.D.1901, by A.H.Ely, Mattie B.Ely his wife parties of the first part to H.A.L. Maness of the second part all of Lee County, Virginia:

Witnesseth, that for and in consideration of the sum of Five hundred and forty-seven and 50/100 dollars, Three hundred and forty-seven and 50/100 dollars in hand paid, the receipt whereof is hereby acknowledged, and the residue, or two hundred dollars to be paid with interest from this date, in two equal installments the first due in one year from this date and the other due in two years from this date the said first parties, reserving to themselves a vendor's lien on said deferred payments, do and each of them doth hereby give, grant, bargain, sell and convey unto said second party his heirs and assigns in fee simple excepting therefrom all coal and mineral rights and timber rights and rights of way which have been heretofore conveyed to F.A.Stratton, all that certain tract or parcel of land, lying and being in Lee County, Va. in the Pocket country on the waters of Straight creek, and bounded as follows, to-wit: Beginning on the top of Lone mountain at two maples a gum and white oak in a flat, the Pennington corner, thence along the top of the mountain N  $30\frac{1}{4}$  E 42 p. to a chestnut oak on top of a high point, N  $11\frac{1}{2}$  W 38 p. to three chestnut sprouts on a high point, N  $33\frac{1}{2}$  W 7 p. to a chestnut oak on a point, N  $80\frac{1}{2}$  W  $14\frac{3}{4}$  p.to a black oak on a flat, S  $65\frac{3}{4}$  E 17 p to a hickory, said Maness corner & with his lines, N. $53\frac{1}{4}$  W 73 p.crossing meadow branch to a white oak and rock near the top of a spur S 74 W.8 p to a chestnut stub N  $12\frac{3}{4}$  W 28 p to a white oak stub on a point N  $38\frac{1}{4}$  E 20 p on top of a high point N 10 W  $17\frac{3}{4}$  p to a white oak and dogwood in a low place in the ridge, N 20 E  $18\frac{1}{4}$  p to a black oak stub on a point N  $38\frac{1}{4}$  E  $27\frac{3}{4}$  p to a chestnut and service on the side of a spur, thence leaving the spur on ridge and leaving said Maness line, N 47 W. 54 p to a spruce pine, hickory, double ash (pine now gone) on the south bank of Straight creek, thence down the creek S. 60 W. 14 p S  $54\frac{1}{4}$  W 60 p to the ford of Straight creek, thence leaving the creek and with the road S  $5\frac{1}{2}$  W 7 p S  $20\frac{1}{2}$  W  $7\frac{3}{4}$  p S  $1\frac{1}{2}$  W 15 p. S  $18\frac{1}{4}$  W  $25\frac{3}{4}$  p. S 26 E  $13\frac{1}{4}$  p. thence leaving the road S 48 W 8 p.to the creek, thence



up the creek N  $51\frac{1}{2}$  W  $30\frac{1}{2}$  p. N 35 W 8p to a birch and poplar on the west bank of the creek, thence leaving the creek S.  $65\frac{1}{2}$  W. 20 poles to a small poplar, S.  $74\frac{3}{4}$  W. 18 p. to two small sugar trees from the same root, S  $87\frac{1}{2}$  W  $20\frac{1}{2}$  p. to a hickory and service on the end of a spur S  $44\frac{1}{2}$  W.  $17\frac{1}{2}$  p. to a black oak, chestnut oak at a large stump on Bradley's ridge a corner to the original tract and with the same S  $10\frac{3}{4}$  E 22 p. to two chestnut oaks S  $33\frac{1}{2}$  E. 15 p. to a white oak, S. 32 E.  $18\frac{1}{2}$  p. to a black oak, S.  $58\frac{1}{2}$  E. 18 p. to gum and rock, N. 60 E.  $13\frac{1}{2}$  p. to a stake in the McCrudy line and with it S  $30\frac{3}{4}$  E. 75 poles to a white oak, beech and maple, S. 69 E.  $26\frac{3}{4}$  p. to two maple saplings on the side of a ridge S 89 E  $6\frac{1}{2}$  p. to four sourwoods, hickory and cucumber on a high point S 20 E 7 p. S  $89\frac{1}{4}$  E.  $39\frac{1}{2}$  p. to a black and white oak pointers, S  $33\frac{1}{4}$  E  $18\frac{1}{4}$  p. to a white oak and red oak near the top of the ridge, N.  $71\frac{1}{2}$  E. 100 p. to the beginning and containing 225 acres more or less.

To have and to hold said tract of land with said exceptions of F.A. Stratton his heirs and assigns, unto the said H.A.L. Maness forever in fee simple.

And the said parties of the first part do hereby covenant with the said second party to warrant generally the title to said land except as to any and all rights of said F.A. Stratton his hers and assigns therein.

Witness the following signatures and seals, the day and year first above written.

A. H. Ely, (Seal.)

Mattie B. Ely, (Seal.)

Virginia, Lee County to-wit:

I, J. F. Skaggs, a Justice of the Peace in and for the County and State aforesaid, do hereby certify that A. H. Ely and Mattie B. Ely, whose names are signed to the writing above bearing date on the 29th day of Jan. 1901, have acknowledged the same before me in my county aforesaid. Given under my hand this the 29th day of January, 1901.

J. F. Skaggs, J.P.

Virginia, Lee County, to-wit:



In the office of the clerk of the county court for said county, the 30th day of January, 1901, this deed being properly stamped was presented and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B.37, page 133)



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Wm<sup>m</sup> Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al.

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"Exhibit No. 12."

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A. H. Ely, et ux.  
Do. { Deed.  
H. A. L. Maress.

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This deed made this the 29th day of January 1901, by A.H. Ely and Mattie B. Ely his wife parties of the first part to Charles H. Maness of thesecond part, and all of Lee County, Va.

Witnesseth: that for and in consideration of the sum of (\$887.50) Eight hundred and eighty seven and 50/100 dollars, by said second party paid and to be paid to said first party, they the said first parties reserving to themselves, their heirs and assigns thereon a vendor's lien for two hundred and eighty seven and 50/100 dollars with interest from this date and payable in two equal installments, due in one and two years respectively, do and each of them doth hereby give, grant, bargain, sell and convey unto the said Charles H. Maness excepting therefrom such rights as F.A. Stratton his <sup>e</sup> heirs and assigns may have therein, a certain tract or parcel of land lying and being in Lee County, Va. in the Pocket country on the waters of Straight creek and bounded as follows, Beginning on a spruce pine, hickory and double ash (pine now down) on the south side of Straight creek, thence up and with said creek N. 16 W. 25 p. below and near the old Parsons Mill dam, thence leaving the creek N 77 $\frac{3}{4}$  E 38 $\frac{1}{2}$  p. to a white oak stub and service on top of a high point of the ridge and with it N. 42 $\frac{1}{2}$  W. 14 p. to a double black oak N. 12 W. 72 $\frac{1}{2}$  p. to a chestnut oak, N 22  $\frac{1}{4}$  W 20 p to a stake and chestnut marked as a pointer N 36 $\frac{1}{2}$  W 11 p. to a stake in D.S. Reasor's, a black oak marked as a pointer, thence with Reasor's line S. 53 W. 173 p. to a poplar, the McCreedy corner, S. 38 $\frac{1}{2}$  W. 9 $\frac{3}{4}$  p. to a stake on top of the ridge and with the same, S 6 E 7 p. to a chestnut and stake S. 20 $\frac{1}{2}$  W. 19 $\frac{1}{2}$  p. to two black oaks, S. 19 $\frac{1}{2}$  E. 10 p. S. 16 $\frac{1}{2}$  W. 10 $\frac{3}{4}$  p. to two chestnuts (now down) S. 37 $\frac{1}{2}$  W. 15 $\frac{1}{2}$  p. to two gums, S. 7 $\frac{3}{4}$  E. 25 p. to three black oak saplings S. 11 E. 19 p. S. 64 E. 11 $\frac{1}{4}$  p. to a gum S. 86 $\frac{1}{2}$  E. 15 p. to a service S 56 E 29 $\frac{1}{2}$  p. to a gum, S. 52 $\frac{3}{4}$  E. 18 p. S. 58 E. 22 p. at two stumps, thence leaving the ridge and original line of said Ely's land conveyed to him by R.L. Pennington Comr. N. 45 $\frac{1}{2}$  E 17 p. to a hickory and service on the end of a spur N. 77 $\frac{3}{4}$  E. 20 $\frac{1}{2}$  p. to two sugar trees from the same root, N. 74 $\frac{3}{4}$  E. 18 p. to a small poplar, N. 65 $\frac{1}{2}$  E. 20 p. to a birch and polar



on the west bank of Straight creek, thence down the same S.35 E. 20 p. S.51 $\frac{1}{2}$  E.30 $\frac{1}{4}$  p.thence leaving said creek N. 48 E. 8 p.to the road and with it N. 26 W. 13 $\frac{1}{4}$  p. N. 18 $\frac{1}{4}$  W. 25 $\frac{1}{2}$  p. N.1 $\frac{1}{2}$  E 15 p., N.20 $\frac{1}{2}$  E 7 $\frac{3}{4}$  p. N. 5 $\frac{1}{2}$  E.7 p.to the creek at the ford, thence up the creek and with the same, N.50 $\frac{1}{4}$  E.60 p.N.60 E.14 p. to the beginning and containing 223 acres more or less.

To have and to hold said tract of land excepting therefrom all the right of F.A.Stratton his heirs and assigns therein unto the said Charles H.Maness his heirs and assigns forever in fee simple.

And the said first parties do hereby covenant with said second party, his heirs and assigns, to warrant generally the title to said tractvof land, except as to the rights and interests of F. A.Stratton his heirs and assigns therein.

Witness the following signature and seal, the day and vear first above written.

A. H. Ely, (Seal.)

Mattie B. Ely, (Seal.)

Virginia, Lee County, to-wit:

I, J.F.Skaggs a Justice of the Peace in and for the county of Lee and State aforesaid, do hereby certify that A.H.Ely and Mattie B. Ely whose names are signed to the writing above bearing date on the 29th day of January 1901, have acknowledged the same before me in my county aforesaid. Given under my hand this the 29 day of January,1901.

J. F. Skaggs, J.P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the county court for said county, the 30th day of January 1901, this deed being properly stamped was presented and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B. 37, p.135 &c.)



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W<sup>m</sup> Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al.

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"Exhibit No. 13."

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A. H. Ely et ux.  
To { Deed.  
Chas. H. Mauness.

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This deed made this the 8th day of Feb. 1902, by L.M. Zion and Minerva C. his wife parties of the first part to Rebecca Tyra party of the second part, and all of Lee County, Va.

Witnesseth, That for and in consideration of the sum of Two Hundred and thirty dollars paid at and before the making of this deed the said parties of the first part with covenants of special warranty, Do and each of them doth hereby Give, Grant and convey by the boundary a certain tract or parcel of land lying and being in Lee County, on the waters of Puckets creek in the Pocket country and bounded as follows, to-wit: Beginning at a poplar in the mouth of Coal Bank Hollow on Puckets creek near the uper end of a bottom field, thence eastwardly to the top of a ridge to a corner on the top of said ridge on a line of C.D. Russell's and J. Pennington's land, thence up and with said ridge as it meanders to another corner of said parties, then up and with said ridge to a chestnut near a grave yard, thence  $3\frac{1}{2}$  W. 17 p. & 11 links to a chestnut and maple, S. 7. E. 10 p. to a black oak, S. 17 E. 9 p. to a chestnut and chestnut oak, S. 22 E. 20 p. & 13 links to a chestnut, dogwood and maple, S. 21 E. 8 p. to a chestnut oak, S.  $15\frac{1}{2}$  W. 3 p. & 13 links to a chestnut oak, South 6 p. to two chestnuts, S. 27 E.  $3\frac{1}{2}$  p., S. 40 E. 9 p. to a small black oak, S.  $37\frac{1}{2}$  W. 28 p. & 16 Links to two small chestnuts, S. 10 W. 4 p. to 2 chestnuts, S. 1 E. 10 p. & 6 L. to a chestnut oak, beech & maple, S. 8 E. 6 p. & 7 L. to 2 small hickories, S. 1 W. 4 p to 2 black oaks, S.  $5\frac{1}{2}$  E. 8 p. to 2 black oaks, S. 10 W. 4 p. & 16 L. to an oak, S. 10 E. 6 p. & 16 L. to a black & water oak, and chestnut in Low Gap, old marked corner, S.  $20\frac{1}{2}$  E. 11 p. & 11 L. to two oak bushes, S.  $10\frac{3}{4}$  E. 9 p. & 5 L. to an oke S.  $25\frac{1}{2}$  E. 5 p. & 17 L. to a sourwood, S. 41 E. 11 p. & 15 L. to 2 dog-woods, S. 33 E. 11 p. & 10 L. to an oake bush, S.  $19\frac{1}{2}$  E. 20 p. to a stake near two birches, S. 37 E. 7 p. & 5 L. to the Beginning and supposed to contain about ninety acres.

To Have and to Hold said tract of land unto the said party of the second part in fee simple, except the coal & mineral and all other rights of F.A. Stratton, his heirs and assigns. This conveyance is made by the boundary and not by the acre.



Witness the following signatures and seals the day and year first above written.

L. M. Zion, (Seal.)

Minerva C. Zion, (Seal.)

Virginia, Lee County, to-wit:

I, J.F.Skaggs a Justice of the peace in and for said county & State, do hereby certify that L.M.Zion and Minerva C.Zion, whose names are signed to the annexed writing bearing date on the 8th day of Feb.1902, have acknowledged the same before me in my county aforesaid.

Given under my hand this the 14th day of Feb.1902.

J. F. Skaggs, J.P.

Virginia, Lee County, to-wit:

In the office of the clerk of the county court for said county, the 2nd day of June, 1902. This deed was presented and, together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

( D.B.No.39, p.58 &c.)



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Wm<sup>m</sup> Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al

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"Exhibit No. 14".

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L. M. Zion, et ux.  
To { Decd  
Rebecca Tyra.

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This deed made this the 30th day of July 1901 By and between William Eldridge and Marget Eldridge his wife parties of the first part and A.J.Witt Sr. parties of the second part all of the County of Lee and State of Virginia Witnesseth that for and in consideration of the sum of one hundred and twenty five (125.00) in hand paid the receipt of which is here by acknowledged, the said William Eldridge and Marget Eldridge his wife parties of the first part does grant, bargain sell and convey unto the parties of the second part a certain Tract of parcel of land Lying and being in the County of Lee and State of Virginia on the waters of Pucketts creek known as a part of the Big Branch Tract of 252 acre which was sold by the court and deed made to William Eldridge and father bounded and described as follows, To-wit:

Beginning at a Black oak corner to Almyra Thomas on a spur, thence N.  $47\frac{3}{4}$  W. 7 po. 6 links to stake near a small ches. N. 19 W. 21 po 15 L to 3 chestnuts N. 5 E. 5 po 9 L. to oak Busk N. 63 W. 13 po. 12 L. to 2 oaks and a maple N. 8 W. 6 po. to chesnut on high point N.  $68\frac{1}{2}$  W. 6 po 12 L to oak Bush N.  $39\frac{1}{2}$  W. 12 po to oak, N. 17 po 15 L. to 2 sourwoods N.  $44\frac{1}{2}$  W. 19 po 13 L to oak Bush N. 26 W.  $14\frac{1}{2}$  po to 2 Sourwoods & oak N. 45 W. 7 po 5 L. to Double Ches. N. 15 W. 7 po 5 Links to 3 ches on Top of Bradleys Ridge N.  $45\frac{1}{2}$  E. 12 po Hickry N. 64 E. 12 po 20 Links to stake near old Hickry cut down the old corner S. 70 E. 31 po to Big Chesnut S. 45 E. 29 po to oak S. 86 E. 36 po to ches. oak S. 61 E. 10 po to small hickry S. 21 E. 18 po. to ches. sprout corner to Almyra Thomas and with her line S.  $26\frac{1}{2}$  W. 7 po & 8 L. to oak Bush S. 5 W. 5 po. 15 L. to 2 oak Bushes S. 18 W. 12 po 10 L to aches and oak S. 38 W. 8 po & 16 L. to ches. & Locust S. 15 E. 13 po. 15 L. to ches. Bush in Rocks S. 6 E. 8 po. 12 L. to Black oak & white oak S.  $25\frac{1}{2}$  W. 37 po to Rock and Beech at the Forks of Big Branch S. 76 W. 29 po 11 L. to the Beging containg 58 Acres more or less and the said William Eldridge and Marget Eldridge do warent specially here by the land conveyed. Witnesseth the following signatures and seals.

William X Eldridge (Seal.)

Marget X Eldridge (Seal.)

Virginia, Lee County, to-wit:



I, B. N. Barnett a Justice of the Peace In aforesaid do certify that William Eldridge and Marget Eldridge His wife personally appeared before me and acknowledged their names to the Righting Bearing date on July 30, 1901. Given under my Hand this 30 day of July, 1901.

B. N. Barnett, J.P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court for said County the 12th day of October 1901. This deed was presented and together with the certificate thereto annexed admitted to record.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.  
(D.B. 38. p. 22. )



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Wm Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al.

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"Exhibit No. 15."

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Wm L. Eldridge, et ux.  
To { Deed.  
A. J. Witt, Sr.

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This deed made this the 30th day of July 1901 By and between William Eldridge & Marget Eldridge his wife parties of the first part and Almyra Thomas and her Thomas heirs parties of the second part, all of the County of Lee and State of Virginia, Witnesseth that for and in the consideration of the sum of one hundred and twenty five dollars in hand paid the receipt of which is hereby acknowledged the said parties of the first part does grant Bargan Sell and convey a certain Tract or parcel of land lying and being in the County of Lee and State of Virginia on the waters of Pucketts Creek known known as a part of the Big Branch 252 A tract sold and deeded to William Eldridge by the court and father bounded and described as follows to wit Begining at a poplar on the McCradie line thence S.39 W.144 po.to stake on Top of a ridge 8 feet below a ches. N.42 $\frac{1}{2}$  W.14 $\frac{1}{2}$  po to oak N.25 W.11 po to Ches. N.4 E.24 po to a oak N.19 $\frac{1}{2}$  W. 30 po to stake & maple N.13 $\frac{1}{2}$  W.20 po.12 L.to gum & oak N.5 E.11 po to Gum N.24 E.15 po to oak corner S.86 E.17 po II L.to Rock oak & ches. N.31 E.46 po to Stake at the forks of the Big Branch N.22 $\frac{1}{2}$  W.34 po to a Black oak N. 76 E.29 po 11 L.to Beech Rock A.J.Witt corner and with his line N.25 $\frac{1}{2}$  E. 37 po to 2 small Black oaks & white oak N. 6 W. 8 po 12 L.to Ches-Bush in Rocks N. 15 W.13 po 15 L.to ches. & Locust N.38 E.8 po 16 L. to ches. & oak Bush N. 18 E.12 po & 10 L.to 2 oak Bushes N.5 E.5 po 15 L.to oak Bush N. 26 $\frac{1}{2}$  E.7 po 8 L.to Ches Bush on point, corner to A.J.Witt S.77 E.38 po.to stake in McCradia line S.3 $\frac{1}{2}$  W.166 po.to the poplar Begining corner containing 115 $\frac{1}{2}$  acres more or less The said parties of the first part does here by warent specially the land conveyed. Witnesseth the following signature & seals.

William X Eldridge (Seal.)

Marget X Eldridge (Seal.)

Virginia Lee County to wit

I B N Barnett A Justice of Peace in the Aforesaid do Certify that William Eldridge and Marget Eldridge his wife whose names is signed to the Righting hereto Annexed Bearing date on the 30th Day of July Has Anknowledged the same before me In my County aforesaid Given under my Hand this 30th day of July 1901.

B. N. Barnett, J.P.



Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court for said County, the 12th day of October 1901. This deed was presented and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

( D. B. No. 38, p.23 &c.)



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Wm^u Pennington
vs { In Chancery.
Chas. E. Mallett, et al.
~~~~~

"Exhibit No. 16."

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Wm Eldridge et ux.
To { Deed.
Almyra Thomas.
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This Deed made this Oct 1st day A.D. 1901 by & between B.N. Barnett and Sarah E. Barnett his wife of the first Part and J.N. Kelly of the second Part all of the County of Lee and State of Virginia, Witnesseth that for and in consideration of the sum of \$179.00 one Hundred and Seventy nine Dollars in hand Paid the Receipt of which is hereby acknowledged the parties of the first part do grant bargan, sell, Confirm and convey untoe the said parties of the second part with covenants of General Warranty all that certain tract or Parcel of Land situated and being in the Pocket Country of Lee County Virginia and on the head waters of Puckets Creek and containing 74<sup>3</sup>/<sub>4</sub> acres more or less, bounded as follows to wit: beginning on three beeches on the East side of Puckets Creek thence up the said Branch N. 67 W. 7 po 21 L. to a stake, *N. 43<sup>1</sup>/<sub>2</sub> W. 7 P. to stake. N. 28<sup>1</sup>/<sub>2</sub> W. 13 Po. 17 L. to stake.*  
 N. 55 W. 8 po. to stake in Branch on top of a bluff in branch N. 52<sup>1</sup>/<sub>2</sub> W. 30 po to stake on a spur up said spur N. 49 W. 10 po. to stake N. 54 W. 13 *N. 36<sup>1</sup>/<sub>2</sub> E. 33 P. to ash corner, thence up a small hollow N. 12<sup>1</sup>/<sub>2</sub> E. 30 Po. to a chestnut*  
 po to a maple N. 51<sup>1</sup>/<sub>2</sub> W. 33 p. 10 L. to 2 chestnut oaks thence <sup>on</sup> N. 14<sup>1</sup>/<sub>2</sub> W. 12 po to Black oak N. 7<sup>1</sup>/<sub>4</sub> W. 13 Po. to a chestnut N. 13<sup>3</sup>/<sub>4</sub> W. 48 po. to Hicory & sugar tree thence S. 66 E. 6 po 12 L. to water oak S. 51 E. 32 po to Black oak S. 44 E. 17 Po. to a stake S. 40 E. 17 Po to Hickry sassafras & stake S. 85 E. 2 po. 17 L. to Chesnut & Hicory S. 7 E. 28 Po to Black oak S. 13 W. 46 Po. 12 L. to stake S. 5 E. 19 po. to three oaks S. 19<sup>1</sup>/<sub>2</sub> E. 7 Po. to a chestnut S. 33 E. 36 Po. 12 L. to Black oak S. 38<sup>1</sup>/<sub>4</sub> E. 9 po. to stake S. 55<sup>1</sup>/<sub>2</sub> E. 10 po 18 L. to two ivys S. 10 E. 46 Po to the beginning Corner to have and to Hold the said tract or parcel of land together with its appurtenances there unto Belonging or appertaining Except the & mineral rights to same and the privileges the Rights there too which Have already Been Sold and coveyed. the said first party do detain a Right of way for a wagon Road down the Hollow from said second prties ash corner through the land conveyed to him by said first Partie the said Road to Run down with the Branch on Either Bank of said Branch to where the Road is already made and said first partie is to have free access to water a Long as in the said Branch and said second partis is to have a wagon Road through the said first parties Land below him the said second partie and also is to have a hall Road down what is known as the Coal Bank Hollow through said first partie Land for the

*on a spur, thence up said spur N. 8 W. 39 Po. to black oak.*



conveniens of said second partie Witness the following signature and seal the day and year first above Riten.

B. N. Barnett (Seal.)  
her  
Sarah X E. Barnett, (Seal.)  
mark.

Virginia, Lee County, to-wit:

I, W.T.Orr, a Justice of Peace for the County of Lee and State aforesaid do certify that B. N. Barnett and Sarah E. Barnett his wife whose Names are signed to the foregoing righting Bearing date on the I day of Oct. 1901 has acknowledged the same before me in my county aforesaid.

Given under my Hand this 17 day of March 1902.

W. T. Orr, J.P.

Virginia, Lee County, to-wit:

In the Office of the clerk of the county court for said county the 18th day of March 1902. This deed was presented and, together with the certificate thereto annexed, admitted to record.

Teste; B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B.38, page 470 &c.)



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W<sup>m</sup> Pennington  
vs. { In Chancery  
Chas. E. Mallett et al.

---

"Exhibit No. 14."

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B. N. Barnett, et ux  
To { Deed. }  
J. N. Kelly.

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This deed made this the 26th Dec. 1901, by B. N. Barnett and Sarah E. Barnett his wife parties of the first part and W. T. Bales trustee party of the second part, and all of Lee County, Va.

Whereas the said B.N. Barnett is indebted to the firm of J.R. Gibson & Sons in the sum of (\$359.00) Three Hundred and fifty-nine dollars evidenced by the note of said Barnett waiving the benefit of the Homestead law, and bearing even date herewith; and bearing interest from date; and Whereas the said Barnett being willing and desirous of securing the payment of said sum of money and its interest: Now in consideration of the premises and the sum of one dollar in hand paid, *the receipt whereof is hereby acknowledged*, the said parties of the first part Do and each of them Doth hereby give, grant, bargain and sell unto the said W.T. Bales the following property to-wit:

(1) A certain tract of parcel of land lying and being in Lee County, Va., in the Pocket country on the head waters of Puckets creek and said to contain 142 acres, and is the same land which said Barnett bought from R.L. Pennington Comr. in the chancery cause of Greer Machinery Co. vs. J. D. Pennington et al.

(2) Also a quantity of poplar, chestnut and oak timber and logs lying, being and standing on a tract of land lying and being in Lee County, Va., *in the Pocket country, and being the same timber* and logs which said Barnett reserved in the sale of tract of land to one S.L. McLane, and supposed to be about 100 000 feet.

(3) And also a quantity of poplar, chestnut and oak timber lying being and standing on the lands of Zion Stapleton in the Pocket country and being the same timber which said Barnett bought from said Stapleton.

To Have and to Hold said tract of land and its appurtenances and said timber and logs and all lumber that may afterwards be made out of the same, unto the said Bales forever in fee simple.

And the said parties of the first part covenant with the said second party, his heirs and assigns to warrant generally the title to said land timber & logs.

In Trust nevertheless to secure the payment of said sum of money and its interest to said J.R. Gibson & Sons; and if the same together



with its interest be not paid within one year from this date, then upon the request of said Gibson & Sons, or their assigns, the said Bales shall sell said property or enough thereof to pay said debt, its interest and the costs of drawing and recording this deed, in the way and manner provided by section 2442 of the Code of Virginia for 1887.

Witness the following signatures and seals the day and year first above written.

B. N. Barnett, (Seal.)  
her  
Sarah X E. Barnett (Seal.)  
mark  
W. T. Bales, Trustee (Seal.)

Virginia, Lee County, to-wit:

I, J.F. Skaggs a Justice of the peace in and for the county and State, do hereby certify that B.N. Barnett Sarah E. Barnett and W.T. Bales whose names are signed to the foregoing writing bearing date on the 26th day of December, 1901, have acknowledged the same before me in my county aforesaid. Given under my hand this the 30 day of Dec. 1901.

J. F. Skaggs, J.P.

Virginia, Lee County, to-wit:

In the office of the clerk of the county court for said county, the 31st day of December, 1901. This deed was presented and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B. No. 38, page 190. &c.)



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Wm<sup>m</sup> Berlington  
vs { In Chancery.  
Chas. E. Mallett, etal.

---

"Exhibit No. 18."

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B. N. Barnett et ux  
To { Deed.  
W. J. Bales, Trustee.

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This Deed made this 18th day of Feb. A. D. 1902, by and between B. N. Barnett and Sarah E. Barnett his wife of the first and Samuel L. McLane of the other part, all of the County of Lee and State of Virginia,

Witnesseth, that for and in consideration of the sum of \$150.00 one hundred of fifty dollars Paid in Notes the Receipt of which is hereby Acknowledged the said parties of the first part do and Each of them doth Hereby give Grant Convey and Surender unto to the said Parties of the second Part the surface all timber of What Ever Kind cituated and growing thereon Except one Hundred and twenty-five thousand feet on milling timbers and five standing Locust trees the milling timber is to be moved off of said second parties Land by the 12 day Oct. 1902 and the Locust trees is to remain on the land five years from the 12 day of Oct 1902 unless the said first Party Wants to move the said five Locuses sooner. a certain tractvor Parcel of Land Lying and Being in Lee County Virginia cituated in the Pocket country on the Head Watter of Puckets Creek known as a part of the J. L. Pennington Land which said first Partie Bought of R. L. Pennington Com, and Bounded as follows to wit Begining at 2 ches. oaks J. N. Kellys corner thence N. 49 W. 24 po. 18 L. to a maple and Hickory N. 37 W. 181 to top of Little Black Mountain to stake and oak bush thence N.  $77\frac{1}{2}$  E. 14 Po to stake N. 48 E. 49 Po & 5 L. to ches. oak S. 83 E. 43 Po 9 L. to dubble ches. S. 63 <sup>17 1/2 Po to water oak, white oak & Hickory, S. 66</sup> 41 Po & 17 L. to Hickory S. 66 E. <sup>1</sup>2 Po. to Hickory & sugar tree S.  $39\frac{3}{4}$  E. 48 Po. to ches. S.  $7\frac{1}{4}$  E. 13 Po. to Black oak S.  $14\frac{1}{2}$  E. 12 Po. to Black oak S. 8 E. 39 Po. to Chest. S.  $12\frac{1}{2}$  W. 30 Po. to ash S.  $36\frac{1}{2}$  W. 33 Po. to the Begining Corner Containing 95 acres more or Less to have and to hold the said tract or Parcel of Land together with the appertanances there unto Belonging or appertaining Except the mineral Rights and timbers heretofore mentioned which Have all Ready Bin sold and Conveyed. the partie of second Part is to Have a right of way for a wagon Road down the Hollow from the above mentioned ash corner through the Land sold to J. M. Kelly by the said first Partie and all so a Gate way down a spur from a chesnut corner on top of the said spur. Witness the following signatures and seals the day and year first above Wrten



B. N. Barnett (Seal.)  
her  
Sarah E. X Barnett (Seal.)  
mark

Virginia, Lee County to Wit:

I, W.T.Orr a Justice of the Peace for the County of Lee and State aforesaid do certify that B.N.Barnett & Sarah E.Barnett whose Names is signed to the foregoing Righting Bearing dat on the 18 day of feb.1902 as acknowledged the same Before ~~me~~ in my County aforesaid.

Given under my hand this 17 day March 1902.

W.T. Orr, J.P.

Virginia, Lee County, te-wit:

In the Office of the Clerk of the county court for said county the 30th day of June 1902. This deed was presented and, together with the certificate thereto annexed, admitted to record at 8 o'clock A.M.

Teste: E. M. Morgan, clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.B.39, page 119 &c.)



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Wm Pennington  
vs { In Chancery  
Chas. E. Mallett, et al.

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"Exhibit No. 19."

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B. N. Barnett et ux  
To { Deed  
Samuel L. McLane.

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L. T. HYATT,  
ATTORNEY AT LAW,  
JONESVILLE, VIRGINIA.



This Deed made this 15 day of May In the year 1902 By and between B. N. Barnett and Sarah E. Barnett his wife Partyes of the first Part and Nervy R. Parsons of the other Part All of the County of Lee and State of Virginia, Witnesseth that for and in consideration of the sum of \$115.00 one hundred & fifteen dollars in Hand Paid the receipt of which is hereby acknowledged the said Parties of the first do and Each of them doth here by sell give Grant convey Surender unto the said Party of the second part all that certain tract or Parcel of land lying and being in the Pocket country of Lee County Virginia and being a part of the same land that said first party bought of R.L. Pennington and Bounded as follows to Wit beginning on a Wild Cherry near the mouth of a hollow known as the chesnut house hollow S.  $32\frac{1}{2}$  W. 36 po to a ches oak on top of a Ridge N. 62 W.  $9\frac{1}{2}$  Po to ches sprouts , N. 83 W. 7 Po. to to a beech S.  $72\frac{1}{2}$  W. 4 Po 9 L. to maple & hicory S.  $42\frac{1}{2}$  W. 12 Po. to ches. N. 65 W. 15 Po. to ches. N.  $71\frac{1}{2}$  W. 10 & 12 L. to Double ches. S. 36 W. 10 Po. & 16 L. Black oak, S.  $81\frac{1}{2}$  W. 7 Po 15 L. to ches. N.  $60\frac{1}{2}$  W. 17 Po. to Ches. S. 82 W. 18 Po. & 10 L. to hickory & ches. N.  $74\frac{1}{4}$  W. 7 Po. 10 L. to ches. N. 47 W. 25 Po. 18 L. to ches. on a point N. 33 W. 7 Po. 3 L. to oak corner at fence of Penningtons N. 61 E. 11 Po. 2 L. to Poplar, N.  $84\frac{1}{2}$  E. 18 Po. 11 L. to a Hickory N. 54 E. 21 Po. 8 L. to stake in Low Gap S.  $66\frac{1}{2}$  E. 11 Po 11 L. to stak N.  $72\frac{1}{2}$  E. 9 Po & 5 L. to oak, S.  $77\frac{1}{2}$  E. 6 po 19 L. to stak S. 75 E. 18 to a oak, S.  $78\frac{1}{2}$  E. 7 po to a ches. S.  $83\frac{1}{2}$  E. 13 P. to 3 ches. S. 81 E. 22 po white oak S.  $8\frac{1}{2}$  W.  $4\frac{1}{2}$  p<sup>o</sup> to white oak Birch & maple S. 77 E.  $14\frac{1}{2}$  Po. to the Begining to have and to hold her and her heirs for ever with covenant of General warranty to Gether with the appertenences there unto belonging or appeartaining except mineral Rights which Have already Bin sold and conveyed.

Witness the following signatures and seals the day and year first above written.

B. N. Barnett (Seal.)

Sarah E. <sup>her</sup> X Barnett (Seal.)  
mark



-2.

Virginia Lee County to Wit

I, J.F. Skaggs a Justice of the Peace for the County & State a fore said do certify that B.N. Barnett & Sarah E. Barnett His wife whose names are signed to the foregoing deed bearing date of the 15 day of May 1902 Has acknowledged the same Before me in my County and State a fore said. Given under my hand this 27 day of June 1902.

J. F. Skaggs, J.P.

Virginia, Lee County, to-wit:

In the Office of the clerk of the county court for said county, the 27th day of June 1902. This deed was presented and, together with the certificate thereto annexed, admitted to record at 3 o'clock P.M.

T este: B. M. Morgan , clerk.

A copy, Teste: B. M. Morgan, clerk.

(D.N. 39, P. 115 &c.)



Wm<sup>r</sup> Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al.

"Exhibit No. 20."

B. N. Barnett, et ux  
To { Decd  
Mary R. Parsons—



This Deed made this 27 day of June 1902 between B.N. Barnett and Sarah E. Barnett his wife, parties of the first part, and Simpson Thomas, party of the second part and all of Lee County, Virginia.

Witnesseth: That for and in consideration of the sum of two hundred and twenty three dollars and forty six cents with the accumulated interest thereon, paid and secured to be paid as follows, to-wit: \$44.77 in hand paid which said sum the said Barnett owed the Thomas for lumber and corn and borrowed money for which said Thomas held said Barnett's note, \$47.00 with the accumulated interest theron, to be paid J.R. Gibson & Sons in discharge of a deed of trust which said Gibson & Sons hold against said land hereinafter conveyed, or rather the residue of a deed of trust, due said Gibson & Sons by said Barnett, \$35.00 which said Barnett owes to Henry Coffman, and evidenced by said Barnett's note with said Thomas surety thereon, and payable to said Coffman, \$11.00 which said Barnett owes to H.Z. Parsons for money borrowed from said Parsons and paid on the land hereinafter conveyed, and \$85.60 which said Barnett owes A.K. DeBusk and evidenced by said Barnett's note, all of which debts are to be paid by said second party, the said parties of the first part do grant, bargain, sell and convey unto the said party of the second part with covenants of general warranty, all the residue of that certain tract or parcel of land situate and being in the Pocket country of Lee County Va. on the waters of Puckets creek and known as the J.L. Pennington tract which said B.N. Barnett purchased from R.L. Pennington, Comr. in the chancery cause of the Greer Machinery Co. vs. J.D. Pennington et al. after taking terefrom the three boundaries heretofore sold by said Barnett and wife to J. N. Kelly, S.L. McLane and Manerva R. Parsons all of which said boundaries are fully described in the deeds conveying same and to said deeds reference is here by made for a more particular description of same. To have and to hold said residue of said tract or parcel of land unto the said Simpson Thomas, his heirs and assigns forever; but the said Barnett hereby retains a vendors lien on the said land for the benefit of the said J.R. Gibson & Sons, A.K. DeBusk, and H.Z. Parsons, respectively, to secure the payments of their



respective debts, until said debts are fully paid.

Witness the following signatures and seals, day and year first above written.

B. N. Barnett (Seal.)  
her  
Sarah E. X Barnett (Seal.)  
mark

Virginia, Lee County, Yo-wit:

I, J.F. Skaggs a justice of the peace for the county aforesaid in the State of Virginia do certify that B. N. Barnett and Sarah E. Barnett whose names are signed to the foregoing deed, bearing date of the 27 day of June, 1902, have acknowledged the same before me in my county aforesaid. Given under my hand this 27 day of June, 1902.

J. F. Skaggs, J.P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court for said County the 27th day of June 1902. This deed was presented and together with the certificate thereto annexed, admitted to record at 3 o'clock P.M.

Teste: B. M. Morgan clerk.

A copy, Teste: B. M. Morgan, clerk.

( D.B. No. 29, page 116 &c.)



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Wm<sup>4</sup> Pennington  
vs { In Chancery.  
Chas. E. Mallett, et al.

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"Exhibit No. 21"

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B. N. Barnett, et al.  
To { Deed.  
Simpson Thomas.

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Memorandum of Lis Pendens.

CIRCUIT COURT FOR LEE COUNTY, VIRGINIA:

William Pennington - - - - - Plaintiff,

vs.

In chancery.

Charles E. Mallett and others. - - - - - Defendants.

The general object of the above styled cause, which is pending in the Circuit Court for Lee County, Virginia, is to attach and subject to the payment of a debt of \$10093.36, with interest thereon from the 17 day of May, 1897, due by the said Charles E. Mallett to the said William Pennington, the following described real estate, to-wit: all those certain tracts or parcels of land, lying in Lee County, Virginia, in the Pockett Country, which were conveyed by John L. Pennington and wife to said Charles E. Mallett by deed dated the 26th day of August, 1891, and recorded in Lee County Deed Book No. 27, page 217, to which deed reference is here made for a more particular description of the said lands, and which lands were conveyed by said Mallett to the Pockett Company a corporation, but which deed has never been recorded.

The names of the persons whose estate is intended to be affected by this suit are the following, to-wit: Charles E. Mallett, A. H. Ely, H. A. L. Maness, Charles H. Maness, Rebecca Tyra, Wm. L. Eldridge, A. J. Witt, Almyra Thomas, B. N. Barnett, Simpson Thomas, Joseph Delp, Nery R. Parsons, Samuel L. McLane, W. T. Bales Trustee, J. R. Gibson, J. O. Gibson, C. B. Gibson, O. C. Gibson, and J. N. Kelly.

This the 26th day of October, 1902.

*William Pennington.*  
*By Counsel -*

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said county the 30th day of October 1902. The foregoing writing was presented, and admitted to record at 8 o'clock, A.M.

Teste; *B. M. Morgan* ----- Clerk.



William Pennington  
vs }  
Charles E. Mallett et al

---

Recorded in Deed  
Book No. 39 page 336

---

Examined Oct 30, 1902  
Indorsed

---

Filed Oct 30th 1902  
A. B. Munsey Clerk

Clerk 75-Paid



So The filing and Consideration  
of the Copy of the process,  
attachment endorsed thereon  
by the Clerk and the endorse-  
ment of St. J. Milham Sheriff  
as sworn to by A. B.  
Murray and Geo. P. Liddell  
is objected to by all the  
defendants thereto, except  
Mallott, and Gibbons because  
the filing and Consideration  
of such Copies in this case  
is not that contemplated  
by section 3376 of the Code of  
Va.

Pennington Bros &  
J. C. Ware  
attys.



Virginia, Lee County, to-wit:

I, Geo. P. Cridlin, ~~xxxxx~~ of Jonesville, Virginia, do swear that on the 30th day of October, 1902, I made a memorandum for an attachment suit in equity in the clerk's office of the circuit court for Lee County, under the style of William Pennington vs. Chas. E. Mallett et al., early in the morning of that day, and on the same day filed a memorandum of lis pendens in the clerk's office of the county court; that when I made said memorandum I left with the clerk, Mr. Munsey, a type-written form of endorsement for attachment and also a form of levy which I asked the clerk to copy on the said subpoena when issued; that some little time afterwards, on the same day, I met the sheriff at the clerk's office and asked him to sign the said levy which the clerk had copied on the subpoena which he had issued; and that the said W. J. Mileham <sup>sheriff</sup> thereupon did in my presence and in the presence of the clerk sign his name to the levy which the clerk had written on the said subpoena, on the said 30th day of October, 1902.

Given under my hand this the 9th day of July, 1903.

Geo. P. Cridlin

Sworn to before me by Geo. P. Cridlin this July 9th, 1903.

A. M. Goins,  
Comm. in Chg.



# LAND SALE!

*Wm. Pennington Complt*

vs

*Chas. E. Mallitt et al dfts.*

IN CHANCERY.

To carry out the decree entered in the above styled pending cause, on the 4<sup>th</sup> day of March, 1897, now in the Circuit Court of Lee County, I will proceed at the front door of Lee courthouse on the 17<sup>th</sup> day of May, 1897 and at public out-cry, to the highest bidder, to sell the following described property, to-wit:

The 824 acre and the 170 acre tracts of land, described in Complainant's bill in exhibit "828", excepting therefrom such rights as have been heretofore conveyed to one F. A. Skatton. This land is finely timbered

or enough thereof to pay \$17103.00 and the costs of this suit and the commissions of sale, upon the following terms, to wit: Enough cash to pay cost and commission, and the remainder in three equal installments due in one, two & three years from the date of sale. The purchaser will be required to execute bonds bearing interest from the date of sale with good personal security.

*E. W. Pennington*

Special Commissioner.

This 19<sup>th</sup> day of March, 1897.



William Pennington. )

vs. )

In Chancery )

C. E. Mallett et al Dfts. )

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The report of E. W. Pennington filed in this cause on the first day of July, 1901, excepted to by William Pennington as follows:

The commissioner had no right to pay to the said E. W. Pennington note filed as voucher No. 27 with his report, amounting to \$32,09 , but the same should have been paid to Powell Little & Co. The land in this case was sold for \$3000. After the payment of costs and the debt of Cowan McClung & Co., which was the first lien, the residue was directed by William Pennington to be paid to Powell, Little & Co., on a judgement. The commissioner had no right to retain a part of this fund to pay his own private debts.

The confirmation of this report is excepted to by Isaac Pennington, because this suit is not in condition to make to him and C. D. Russell a good and sufficient deed. At the time of the institution of this suit the legal title to the land herein sold and purchased by the said Isaac Pennington and C. D. Russell, was in the Pocket Company, (a corporation), and said Pocket Company has never been served with process in this cause; hence no title can be made for the land sold.

*L. J. Hyatt, atty for  
Wm Pennington &  
Isaiah Pennington*



Wm Pennington  
r { See brief.  
Chas E. Mallett

Exceptions to Report  
of E. W. Pennington  
Comm



LEE CIRCUIT COURT

**WILLIAM PENNINGTON**

**Vs.**

monochrome

## Bill of review

CHARLES E. MALLET ET AL:
































TO THE HON. H. A. W. SKEEN.

JUDGE OF THE CIRCUIT COURT OF LEE COUNTY, VIRGINIA:

Your orator, Wm. Pennington, humbly complaining, sets forth that heretofore, to-wit, on the 30th, day of October, 1902, he filed his original bill in equity in the Clerk's office of your honor's said Circuit Court for Lee County, against Charles E. Mallett et al, having for its object to secure a foreign attachment against certain lands in the said County of Lee, as the lands of said Mallett, to secure the payment of a certain sum of money as therein set forth: that process was issued in said bill and attachment levied by the sheriff of Lee County and endorsed on the summons in said cause: That the home defendants were served with process by personal service and that an order of publication was duly issued in said cause on January 7th, 1903, against the said Charles E. Mallett as a non-resident of this State and was published in a weekly newspaper published in the said County of Lee as the law required, and your orator charges that a copy thereof was duly posted by the Clerk of the said court as he was required to do by law: that at the March term of your honor's said court, 1903, said cause was properly on the docket of your honor's court, but no action was taken therein: that at the first January Rules, 1903, to which the home defendants had been summoned to



(2)

answer a motion to quash the attachment and a demurrer to the bill was filed by H. A. L. Maness and certain other home defendants, for reasons set out in writing: that at the said June term 1903, the motion to quash said attachment was argued and six several grounds therefor were presented to the court, the second, third and fourth of which were sustained and a decree was entered on July 14th, 1903, during the continuance of the said June term of said court, quashing the said attachment and dismissing the said bill at the cost of your orator.

Your orator is advised that there was error upon the face of said decree and he asks leave to bring this as his bill of review to said decree for the purpose of correcting same and to this end he refers to the original bill in said cause and all exhibits filed therewith and to the rules, orders, pleadings and the said final decree of July 14th, 1903, and all ~~court~~<sup>other</sup> papers in said original cause as fully as if set forth at length herein and prays that same may be read and treated as a part of this cause.

Your orator is advised, with reference to the three grounds stated in said final decree, as those upon which said cause was dismissed, that the second was erroneous, because the said original bill was actually filed at the time the attachment in said cause was sued out, to-wit, October 30th, 1902, and this your orator showed at the hearing of said cause, by the affidavit of A. B. Munsey, Clerk. Your orator is advised that the mere endorsement on the back of the bill by said clerk as follows;

"1903, 1st. January Rules, bill filed, spa executed on home defendants",

is not one required or authorized to be made by law and will be treated as surplusage, and that it is not such a record as the officer making same will not be heard to explain, modify, or contradict. Your orator submits, therefore, that the affidavit of the said clerk as to the fact of the filing of the bill at the time of, and before the attachment was sued out, should have been received and treated as a part of the record and that the court should have based its decree upon the fact shown by said affidavit. Your orator is advised that the clerk must have been presumed to do his duty and



(3)

not to have issued the attachment referred to unless and until the bill in the cause was filed and that there was no competent evidence before the court to overcome such presumption, so that even if said affidavit were not admitted in the absence of any pleading or proof to the contrary, the court should have considered the bill filed at the proper time.

With regard to the third assignment of grounds for quashing the attachment referred to in said decree, to-wit, that the affidavit in the cause did not comply with the law, your orator is advised that the bill which was sworn to, was a sufficient affidavit and that it stated all the facts required by law to be stated in such affidavit, and while the said facts were not stated in the exact language of the statute in such cases made and provided, yet the same was stated so fully and in such manner that the necessary conclusion to be drawn therefrom was that the affidavit required in such case, was properly made.

Your orator is advised with reference to the fourth assignment of grounds for quashing said attachment, set forth in said decree, that there was nothing in the record to show that the order of publication in said cause was not posted as required by law. The clerk must be presumed to have done his duty and not to have matured the cause and set it for hearing as to a non-resident defendant, unless and until he had posted the order of publication as the statute requires. The mere absence, from the file of papers in the cause, of the certificate of the clerk on this point, is no ground for quashing the attachment since said certificate may have been made ~~or~~ misplaced or lost. Certainly the affidavit of the clerk or of some other person who knew the facts, should have been filed as the foundation of a <sup>finding</sup> ~~signing~~ by the court that no such order was posted.

Petitioner is advised, however, that even if it had affirmatively appeared in the record that such order of publication was not posted as required by law, still the motion of your orator to remand the cause to rules as to the said non-resident defendant, should have prevailed, as the failure to have one of the defendants properly



(4)

before the court is not a ground for quashing the attachment and dismissing the cause. The law gives to your orator the right to have alias summons issued as to any home defendants, as often as may be necessary and an alias order of publication against a non-resident defendant.

**WHEREFORE**, being without remedy save in a court of equity, the prayer of your orator is, that he be allowed to file this as his ~~amended~~ ~~his~~ bill of review in said cause of William Pennington vs. Charles E. Mallett et al, and that the following named persons be made parties defendant hereto and be required to answer this bill: to-wit:

A. H. Ely, H. A. L. Maness, Chas. H. Maness, Rebecca Tyra, Wm. L. Eldridge, A. J. Witt, Almyra Thomas, B. N. Barnett, Simpson Thomas, Joseph Delp, Nervy R. Parsons, Samuel L. McLane, W. T. Bales, Trustee, John R. Gibson, James O. Gibson, Chas. B. Gibson, Olin C. Gibson and J. N. Kelly: that the bill in the original cause be treated as a part of this bill and that the said defendants be required to answer same as well this bill of review, and that upon a final hearing hereof the same relief be granted to your orator in this bill as was prayed in the bill in said original cause; and for such other, further and general relief as to equity may seem meet and the nature of his cause require.

And your orator will ever pray etc.

*R. J. Irvine*  
*L. J. Hyatt*



Wm Pennington

vs Bill  
of  
Review

Chas C. Mallett et al

---



LEE CIRCUIT COURT

WILLIAM PENNINGTON,

vs.

BRIEF ON BILL OF REVIEW:

CHARLES E. MALLETT ET AL:

---

I.

The first ground for dismissing this bill was, that the record showed that the bill was not filed at the time the attachment was sued out, to-wit, on October 30th, 1902. As a matter of fact, the bill was filed with the clerk in his office on said date and before the attachment was issued and this fact was attested by the affidavit of the Clerk, A. B. Munsey to that effect at the hearing of the cause at the July term, 1903, and other affidavits to the same effect could be procured.

The only point to consider, therefore, is, whether or not there is anything in the record to the contrary and if so, whether it is conclusive on the plaintiff. The court in its decree of July 14th, 1903, was of the opinion that to consider the affidavit of the Clerk, would be to contradict the record. The rule docket kept by the clerk of each cause, is a part of the cause. The Clerk, like any other officer, is presumed to do his duty. If the court did not look to the rule docket in this case, then it must presume that the clerk did his duty and did not issue the attachment until the bill was filed, since this was required of him by law. If the court did look at the rule docket, it ~~found~~ found, as a matter of fact, the clerk did not enter this cause in his rule docket. We now ~~ex~~ vouch the said docket to show this fact.

The court based its decree as we understand it, on the fact that on the back of the original bill, the following is written:

"1903, 1st January rules Bill filed spa executed on home defts."



This memorandum is not signed by any one, but it was assumed by the court, and for purposes of this argument, we admit that it was endorsed thereon by the clerk and this is the record which the court considered the affidavit of the court was intended to contradict. Regarding this we make two contentions:

FIRST: There is now law which authorizes or directs the clerk to make such endorsement as this on the bill. It is, therefore, surplusage and is binding on no one and cannot be treated as any part of the record. It is too well understood to need argument, that the record, which rules of law provide an officer shall not contradict, is such record as such officer is required by law to make and keep, such as the certificate of a Justice or other office to an acknowledgment; a return of a sheriff on a process or execution. In order to give stability and certainty to legal proceedings and property rights growing out of these and similar records, the law will not allow officers making such records, to contradict them. The endorsement by the clerk in this case, however, is not in this category and we know of no rule of law that would not allow the clerk in this instance to set up the fact. Moreover, the endorsement of the clerk on the bill above set forth can reasonably be construed to mean that the bill was already on file at the time of first January Rules, and not necessarily that it was filed at, or during the said Rules. If the bill had been filed October 30th, at the time the attachment was sued out as the law required, but the clerk had not made any memorandum on the bill up to the First January Rules, but had set down at that time to make a note of the proceedings in the case on the bill for convenience of himself and counsel, his language would have been, with nine clerks out of ten, just what we find the language here "Bill filed, spa executed etc."

SECOND: Even if the clerk had made up his rule docket regularly and hand, contrary to the fact shown on said docket, that the bill in this case was not filed until the First January Rules, it was competent for the court, and it was its duty to correct the Rules in this respect, and by its decree, make the cause conform to the facts. Section 3236 of the Code, provides that Rules shall be held



(3)

in the Clerk's office on the first and third Mondays in every month and which continue three days. Section 3237 provides that there shall be a docket of the case at rules wherein the rules shall be entered. Section 3239 is as follows:

"NATURE OF RULES: HOW GIVEN:-The Rules may be ~~given~~ to declare, plead, reply, rejoin, or for other proceedings; they shall be given from one rules to the next. Rules."

The notation of the time when a bill is filed is not, therefore, any part of the rules. A rule in this sense is an order made against some party to the cause to do something: To-wit: either to declare, plead, reply, rejoin, or for other proceedings similar to these. There is no statute ~~x~~ which requires the clerk anywhere to make a notation of the time of filing a bill, but such time is a fact that may be shown like any other fact. The filing of the bill is the foundation for the rule against the defendants to plead or to do certain other things. The failure to file the bill is the foundation ~~for the rule against~~ of the rule on behalf of the defendants against the plaintiffs to plead. It is the custom, and a good one, that a rule docket should show just when such pleadings are filed, but the failure to do so, or to fix an erroneous date, does not preclude plaintiff from showing the fact by competent evidence. The rules are never written in ex tenso on the rule docket, but merely a memorandum is made of what the rules would contain if written out. For example of these we refer to Second Barton Chancery Practice (2nd. Ed.) 1306 et seq.

Section 3293 provides that the court shall have control over all proceedings in the office during the proceedings vacation, and there are several cases in Virginia construing this section. IN Southall vs. Exchange Bank, 12th Grat. 312, it is held that an irregularity committed at rules, may be corrected at the next term of court. In Wall vs. Atwell, 21st, Grat. 401, it was held that if the proceedings in the office had been so irregular, that the cause was not properly on the office docket, the court should remand it to rules for proper proceedings.



(4)

It is, therefore, clearly within the power of the court, either to remand the cause to rules, there to be properly proceeded in, or by its own decree to correct the rules if any had been taken or to supply the omission, if any had been made, or to show the facts which the plaintiff had offered to show and on these facts to decree that the cause had properly matured and was properly on the docket. The language of Section 3293 is extremely broad. The court has "control"; that is, may correct, revise, amend, supply, or to do anything else necessary to set forth the facts "over all proceedings in the office", which certainly includes notations of the time of filing the bill as well as of similar proceedings.

The spirit of the statute, as we think, is that ~~in~~ in the multitude of acts required to be done by the clerk in his office mistakes of this nature are likely to occur. Again, clerks are not lawyers and in many cases ~~of~~ mistakes the legal purport of pleadings and make errors in their rules by reason thereof. The purpose of this section is to correct all such errors and omissions and to ascertain and declare judiciously in accordance with the facts in each case, to the end that justice may be done to all and that no injustice may be done in regard to these technical proceedings.

We submit, therefore, that in any possible view of the case, it was error for the court to dismiss the bill for the reason under discussion.

## II.

The second ground upon which the bill was dismissed, was that no affidavit ~~is~~ was made that to the best of plaintiff's belief he was entitled to or ought to recover at the least, the sum of money which he alleged in his bill was due.

The bill sworn to is certainly an affidavit. An affidavit is merely an oath reduced to writing. The statute does not prescribe any particular form for this affidavit; does not require that it shall be on a separate piece of paper. We understand that the court was not troubled on this question and as we do not conceive how it



could be, we will pass ~~kk~~ to the next point.

The real question, we suppose, that troubled the court, was of the sufficiency of the affidavit treating the bill as such. Section 2964 requires such affidavit to conform as nearly as its nature will admit, to the affidavit required by section 2959. An exact or literal compliance with section 2959 is not required and there is a wide difference in the degree of strictness required in an action at law, and a bill in chancery on this point. See *Cirode v. Buchanan*, Admr. 22 Grtt. 205. Section 2959 on this point requires three things in the affidavit:

FIRST:-that the plaintiff's claim is believed to be just/

SECOND:-a certain <sup>sum</sup> ~~form~~ which (at the least) affiant believes ~~kk~~ plaintiff is entitled to recover.

THIRD:-that the defendant is a non-resident and has estate in the county in which ~~su~~ it is brought.

There is no contention on the third point, so we will only discuss the first and second.

In *Clinch River Mineral Company v. Harrison*, 91st, Va. 128, it is said,

"It is true that the affidavit ~~is~~ is always to be strictly construed, and any omission of the requirements of the law is fatal to the attachment, but if the language of the affidavit necessarily implies the fact, it is sufficient."

The language of the bill on this point is as follows:

"Your orator further represents that on the said 17th day of May, 1897, the amount then due on the said purchase price of the said two tracts of land, including all unpaid interest to that date, was seventeen thousand nine hundred and eighty-four dollars and thirty-six cents (\$17984.36); and that, after deducting the said net price for which the said lands were sold, or two thousand eight hundred and ninety-one dollars (\$2891.00) therefrom, there was left due to your orator on that day the sum of fifteen thousand and ninety-three dollars and thirty-six cents (\$15093.36): And your orator alleges that the said Chas. E. Mallet has not, nor has any other person for him, ever paid the said last mentioned sum/ or any part thereof, or of the interest thereon, to your orator, or otherwise whatsoever, but the same and all legal interest which has accumulated thereon since the said 17th day of May, 1897, is now justly due and owing to your orator, and his assignee, by the said Chas. E. Mallet."

This contains a direct unequivocal statement of facts.

He gives the exact sum due on May 17th, 1897, and the credit as of that date and then gives the balance due as of said date, and charges this sum with legal interest from said date, is now justly due and owing to the plaintiff. The bill shows that these were transac-



-tions had directly between the plaintiff and Mallet and they were facts within the peculiar knowledge of the plaintiff. The oath to the bill is that the statements contained in the bill, so far as made from plaintiff's knowledge, are true and so far as made from knowledge derived from other sources, he believes them to be true. We submit that this is equivalent to a direct oath that the sum of money stated is true and that it is just, and this is equivalent to the statement that the claim is believed to be just. This case in this respect is on all fours with the case above referred to of ~~Clinch~~ Clinch River Mineral Company v. Harrison.

While the bill does not follow in terms the language of the statute and specify "a certain sum which (at the least) affiant believes plaintiff is entitled to recover", it does state the facts from which this conclusion is necessary and irresistible. It states the sum certain and it gives a minute history of the indebtedness, the manner in which it arose, the various credits and the balance left due of the transaction cited and states that no part of this had ever been paid, but that the whole thereof is justly due and owing. We cannot conceive how language could more clearly imply that the sum named, at the least, ought to be recovered by the plaintiff.

Every statute should have a reasonable construction. The law does not intentionally set pit-falls. There is no magic in the use of the words "at the least", or that "plaintiff ought to recover". The expression "at the least" is included in and fully complied with by naming the exact sum due. Where the affidavit was that the defendant was indebted to the plaintiff in a sum exceeding \$2,000.00 it was held to specify with certainty that at least that sum was due. 2nd. Barton's Chancery Practice (2nd. Ed.) 627. The supreme court of West Virginia, by a divided court, held in the case of Altemyer vs. Caulifield, 37 W. Va. 847, 17 S. E. Rep. 409, that the omission of the words "at the least" was fatal and this opinion was followed in two subsequent cases, but in the case of Courson vs. Parker 39 W. Va. 521, 20 S. E. Rep. 583, the court hedged and modified the



the rigor of this decision holding that "at least" was equivalent to "at the least". The dissenting opinion in the case of *Altemyer vs Caulifield*, is more conformable to reason as we believe, and we think the Court of Appeals of our State will follow it, if the point ever reaches them. Moreover, in the West Virginia cases, the records were not such as is the case here where the facts were fully stated and the inference from these facts were irresistible that the statute was complied with.

*"The better practice in proceeding by attachment in chancery is to state in the bill the whole case justifying the attachment & then to swear to the bill. But the separate affidavits may be used as occasional justifications."*  
*Citing Sims v. Lynn*  
*4 Va. Law Reg. 5-30.*

III. 2 Port. Ch. Pr. (2nd Ed) p 1327, note

As to the third ground assigned in said decree for dismissing the bill, it being the fourth & ground assigned for quashing the attachment as set forth in said decree, we submit that this is plainly erroneous. The clerk was presumed to have done his duty and not to have placed the cause on the court docket until he had properly posted the order of publication. The mere fact that the clerk's certificate of such posting is not filed in the papers of the cause at the hearing is not sufficient ground for judiciously determining that the act of posting was not performed. The defendants should have sustained their motion by an affirmative affidavit of the clerk or some one else who knew the fact that no such notice was posted before the court should have held this to be the case.

Even if it had properly been determined that no such posting was had, this was not a defect that went to the merits of the case, but merely one in the procedure after the attachment was properly obtained, which errors may always be corrected without abating the attachment. The plaintiff may have as many alias spas issued as may be necessary in order to mature his cause and if the clerk improperly places the cause on the docket, it may be remanded to rules to be matured, and this is the case where the defendant may be a resident or a non-resident. The plaintiff in this case made a motion to be allowed to go to rules and properly mature the cause by new publication if needed and a proper posting, and we submit that



(8)

this should have been allowed him and that the lien of his attachment was still in force and that the court was in error in dismissing the attachment upon this ground.

Respectfully submitted May, 1904.

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attys.



Wm Pennington

{ Brief on  
Bill of  
vs { Review

Chas E. Mallett et al

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In the Clerk's Office of the Circuit Court for the County of Lee,  
on the 7th day of January, 1903.

William Pennington,.....Plaintiff.

versus ( In Chancery.

Chas.E.Mallett, A.H.Ely, H.A.L.Maness, Chas.H.  
Maness, Rebecca Tyra, Wm.L.Eldridge, A.J.Witt, Almyra  
Thomas, B. N. Barnett, Simpson Thomas, Joseph Delp,  
Nervy R.Parsons, Samuel McLane, W.T.Bales, Trustee,  
John R.Gibson, James O.Gibson, Chas.B.Gibson, Olin C.  
Gibson, and J.N.Kelly, .....Defendants.

The object of this suit is to attach and subject to the payment  
of a debt of ten thousand and ninty-three dollars and thirty-six  
cents (\$10,093.36), with interest thereon from the 17th day of May,  
1897, due by the said Chas. E. Mallett to the said William Pennington,  
the following described real estate to-wit: All those certain tracts  
or parcels of land, lying in Lee County, Virginia, in Rocky Station  
Magisterial District, in the Pocket country, which were conveyed by  
John L.Pennington and Fannie E.Pennington, his wife, to the said  
Chas. E. Mallett by deed dated the 26th day of August, 1891, and  
recorded in Lee County Deed Book No.27, page 217, to which deed ref-  
erence is here made for a more particular description of the said  
lands by metes and bounds, the said tracts said to contain in the ag-  
gregate eleven hundred and sixty-five acres, more or less. And an  
affidavit having been made and filed that the defendant, Chas.E.Mal-  
lett is not a resident of the State of Virginia, it is ordered that  
he do appear here within fifteen days after due publication hereof,  
add do what may be necessary to protect his interest in this suit.  
And it is further ordered that a copy hereof be published once a week  
for four successive weeks in the Southwest Virginian, a weekly news-  
paper published at Jonesville, in Lee County, Virginia, and that a  
copy hereof be posted at the front door of the court-house of this  
county on the first day of the next term of the County Court for said  
county.

A.P. Mursey, clerk.

L.T.Hyatt and Geo.P.Cridlin, p.q.

A copy, Teste: \_\_\_\_\_, clerk.



Virginia, Lee County, to-wit:

I, A.B.Munsey, clerk of the circuit court for the county aforesaid in the State of Virginia, do hereby certify that I posted a copy of the within Order of Publication at the front door of the court-house of Lee County, Virginia, on the 19th day of January, 1903, that being the first day of the January term, 1903, of the county court of Lee County.

Given under my hand this the \_\_\_\_\_ day of January, 1903.

\_\_\_\_\_, clerk.

Virginia, Lee County, to-wit:

I, C.R.Sprinkle, Editor of the Southwest Virginian, a weekly newspaper published at Jonesville, in Lee County, Virginia, do hereby certify that ~~xxx~~ an attested office copy of the foregoing Order of Publication was published in said paper once a week for four successive weeks, commencing on the 24th day of \_\_\_\_\_, 1903.

Given under my hand this the \_\_\_\_ day of \_\_\_\_\_ 1903.

\_\_\_\_\_, Editor.

Subscribed and sworn to before me on \_\_\_\_\_, 1903.

\_\_\_\_\_, clerk.



Wm Pennington  
} Order of Publication  
Chas. E. Mallett et al

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3

L. T. HYATT,  
ATTORNEY AT LAW,  
JONESVILLE, VIRGINIA.



In the Clerk's Office of the Circuit Court of the County of  
Lee on the 7th day of January 1903.  
William Pennington Plaintiff  
against Chas. E. Mallett, A. H. Ely, H. A. L. Maness, Chas  
A. Maness, Rebecca Lysa, W. L. Eldridge, A. J. Witt, Almira  
Thomas, B. N. Barnett, Simpson Thomas, Joseph Delp,  
Nevoy R. Parsons, Samuel L. McLane, W. T. Bales Trustee, John R. Gibson  
James O. Gibson, Chas. B. Gibson, O. C. Gibson, J. M. Riley Defendant &

The object of this suit is to is to attach and subject to the payment of a  
debt of ten thousand and ninety-three dollars and thirty-six cents  
(\$10,093.36), with interest thereon from the 17th day of May 1897.

due by the said Chas E. Mallett to the said William Pennington, the  
following described real estate to-wit: All those certain tracts or  
parcels of land, lying in Lee county, Virginia, in Rocky Station d  
Magisterial district, in the Pocket country, which were conveyed by  
John L. Pennington and Fannie E. Pennington, his wife, to the said  
Chas E. Mallett by deed dated the 26th day of August, 1891, and re-  
corded in Lee county Book No 27 page 217, to which reference is here  
made for a more particular description of the said lands by metes  
and bounds, the said tracts said to contain in the aggregate eleven  
hundred and sixty-five acres, more or less.

And an affidavit having been made and filed that the defendant Chas E. Mallett is

not resident of the State of Virginia, it is ordered that he do appear here within fifteen days  
after due publication hereof, and do what may be necessary to protect his interest in this suit. And  
it is further ordered that a copy hereof be published once a week for four weeks in the South-West  
a weekly news-paper published at Jonesville in Lee County Virginia  
Virginian, and that a copy be posted at the front door of the court house of this county  
on the first day of the next term of the county Court.

A copy—Teste:

L. T. Hyatt and Geo P. Herdlin p. q.

A. B. Munsey Clerk.



*Wm Pennington*

vs.

{

ORDER OF  
PUBLICATION.

*Lehas, E. Mallett et al*



In the Clerk's Office of the Circuit Court of the County of  
Lee

William Pennington  
against

Plaintiff

Charles E. Mallett and Pocket Coal Company  
a Corporation  
Defendant &

This day N. D. Pennington personally appeared  
before me A. B. Munsey Clerk of the said Court

and being duly sworn, made oath that the Pocket Coal Co. is a foreign corpora-  
tion, and that there is no writ or other process upon which  
process can be served within the said County  
defendant in the said suit not resident of the State of Virginia, & which is one  
of the defendants in the said cause.

Given under my hand as Clerk of the said Court, this 18th day of December

1896,

A. B. Munsey Clerk



( 2/2 )

FORM NO 302.

*Jm Perrington*

vs.

{

AFFIDAVIT FOR ORDER  
OF  
PUBLICATION.

*W & Mallett et al*

*Perrington Bros. q.*

*Filed December 18th*

*1896*

*A B Munsey Clk*



The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

<sup>again</sup>  
We Command you, That you summon *Chas E Mallett and the*  
*Pocket Coal Company, a Corporation organized*  
*under the laws of the State of Kentucky and doing*  
*business in the State of Virginia*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held  
for the said Court on the *1st* Monday in *February*, 189*7*, to answer a  
bill in Chancery, exhibited against *them* in our said court by

*Wm Perrington*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-  
house, the *18th* day of *December*, 189*6*, and in the  
12. *1st* year of the Commonwealth.

*A B Munsey* Clerk.



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vs. { SUPPENA.  
IN CHANCERY.

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..... p. q.

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To ..... Rules.

CIRCUIT COURT.

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The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

<sup>again</sup>  
We Command you, That you summon *Chas E Mallett and the Pocket*  
*Coal Company, a Corporation organized under the*  
*laws of the State of Kentucky and doing business in*  
*the State of Virginia*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held  
for the said Court on the *1st* Monday in *February*, 189*7*, to answer a  
bill in Chancery, exhibited against *them* in our said court by

*Wm Pennington*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-  
house, the *18th* day of *December*, 189*6*, and in the  
12/*1st* year of the Commonwealth.

*A B Munsey* Clerk.



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vs. { SUPRENA.  
IN CHANCERY.

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..... p. q.

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*To* ..... *Rules.*

CIRCUIT COURT.

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The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

<sup>again</sup>  
We Command you, That you summon *Chas E Mallett and the*  
*Pocket Coal Company a corporation organized*  
*under the State of Kentucky and doing business*  
*in the State of Virginia*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held  
for the said Court on the *1st* Monday in *February*, 189*6*, to answer a  
Bill in Chancery, exhibited against *them* in our said court by

*Wm Permington*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-  
house, the *18th* day of *December* 189*6*, and in the  
12 *1st* year of the Commonwealth.

*A. B. Munsey* Clerk.



(4)

Wm Pennington

SUPPNA.

vs.

IN CHANCERY.

Chas E Mallett et al

Pennington Prop.

To/pt Feby Rules.

CIRCUIT COURT.

February 1<sup>st</sup> / 897  
Not Executed not  
found Charles E.  
Mallett is not  
a resident of this  
state.  
W. P. Weston S. C.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

We Command you, That you summon *Charles E. Mallett and the*  
*Pockett Coal Company a corporation organized*  
*under the laws of the State of Kentucky and*  
*doing business in this State*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held  
for the said Court on the *3rd* Monday in *October*, 189*6*, to answer a  
bill in Chancery, exhibited against *them* in our said court by  
*Wm Pennington*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-  
house, the *10th* day of *October*, 189*6*, and in the  
12 / *1st* year of the Commonwealth.

*A B Munsey* Clerk.

*A Copy*

*Teste A B Munsey Clerk*



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vs. { SUPREMA.  
IN CHANCERY.

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..... p. q.

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*To*.....*Rules.*

CIRCUIT COURT.

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The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

We Command you, That you summon *Charles E Mallett and*  
*the Pocket Coal Company a corporation or-*  
*ganized under the laws of the State of Kentucky*  
*doing business in this State.*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held  
for the said Court on the *3rd* Monday in *October*, 189*6*, to answer a

bill in Chancery, exhibited against *them* in our said court by  
*Jm Pennington*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-  
house, the *10th* day of *October*, 189*6*, and in the  
12/*1st* year of the Commonwealth.

*AB Munsey* Clerk.



(3)

*Stallton*

*Wm Pennington*

SUBENA.

vs. }

IN CHANCERY

*Charles E Mallett et al*

*Pennington Resp. q.*

To *2<sup>nd</sup>* October Rules.

CIRCUIT COURT.

*Not Executed not  
found this Oct  
19-1896. J. M. Weston  
S. S. for W. P. Weston  
S. L. C.*



❁CERTIFICATE OF ORDER OF PUBLICATION.❁

*I*  
 WE, A. M. Goins ~~and W. M. Davidson~~, editors of the SOUTHWEST VIRGINIAN, a weekly newspaper published at Jonesville, Lee county, Va., do hereby certify that the annexed notice was published in said paper once a week for four successive weeks, commencing on the

24th day of Dec, 1896.

A. M. Goins }  
 Per Eads, } EDITOR

Printer's Fee \$5.00

Virginia.

In the Clerk's Office of the Circuit Court of the County of Lee on the 23rd day of December 1896.

Wm Pennington, Plaintiff.  
 against

Charles E. Mallett and the Pocket Coal Company, a Corporation, Defendants.

IN CHANCERY.

The object of this suit is to enforce the plaintiff's vendors lien against the land sold by him to Charles E. Mallett. And an affidavit having been made and filed that the defendant Chas. E. Mallett is not a resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the Southwest Virginian, and that a copy be posted at the front door of the court house of this county on the first day of the next term of the County court.

A c py—feste:

A. B. MUNSEY, Clerk.  
 Pennington Bros. p.q. 4t 12 24 96



Wm Pennington  
vs } Order Paid  
C. E. Mallett et al

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(5-)

Wm A. M. Pennington and J. M. Pennington  
Plaintiffs vs C. E. Mallett et al  
Defendants  
This is a bill of exchange drawn by the  
plaintiffs on the defendants for the sum of  
one hundred dollars, and is payable to the  
order of the plaintiffs, and is due and  
payable at once. The defendants have  
refused to pay the same, and the  
plaintiffs are compelled to bring this  
bill into court for enforcement.

Wm A. M. Pennington  
J. M. Pennington  
Plaintiffs  
C. E. Mallett et al  
Defendants

Printed and Published by  
J. M. Pennington



❁CERTIFICATE OF ORDER OF PUBLICATION.❁

~~We~~, A. M. Goins and ~~W. M. Davidson~~, editors of the SOUTH-WEST VIRGINIAN, a weekly newspaper published at Jonesville, Lee county, Va., do hereby certify that the annexed notice was published in said paper once a week for four successive weeks, commencing on the

24th day of Dec., 1896.

A. M. Goins  
Per Eads } EDITOR

Printers Fee \$5<sup>00</sup>/<sub>100</sub>

Virginia.

In the Clerk's Office of the Circuit Court of Lee County on the 18th day of December: 1896.

Wm. Pennington Plaintiff,  
against

Chas. E. Mallett and the Pocket Coal Company, a Corporation organized under the laws of Kentucky and doing business in the State of Virginia Dfts.

IN CHANCERY,

An affidavit having been made and filed that the Defendant, the Pocket Coal Company, is a foreign Corporation and has no agent or other person in the said county upon whom personal service can be had, It is ordered that a copy of the process in the said cause be published once a week for four successive week in the Southwest Virginian, which said process is in the following words and figures to-wit: "The Commonwealth of Virginia. To the Sheriff of the County of Lee. Greeting: We again command you that you summon Chas. E. Mallett and Pocket Coal Company a Corporation organized under the laws of the State of Kentucky, and doing business in this State to appear at the Clerk's Office of the Circuit Court of the County of Lee at the rules to be held for the said Court on the 1st Monday in February 1897 to answer a bill in Chancery exhibited against them in our said Court by Wm. Pennington. And have then there this writ Witness A.B., Clerk of the Court



Pub  
Mallett

(6)

On the 11th of June, 1877,  
the following report of the  
weekly paper published at Jonesville  
was published in said paper  
to the effect that the annexed notice  
was published in said paper  
on a week for the purpose  
of making a commentary on the

of the  
of the  
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of the



*third*

**CERTIFICATE OF  
ORDER OF PUBLICATION.**

We, C. S. Cox and C. R. Sprinkle,  
Editors of the SOUTHWEST VIRGINIAN,  
a weekly newspaper published at Jones-  
ville, Lee county, Virginia, do hereby  
certify that the annexed notice was  
published in said paper once a week  
for four successive weeks, commenc-  
ing on the 10th day of

January 1903.

C. S. Cox  
C. R. Sprinkle } EDITORS.

FEE, \$ 11.40  
100

**Order of Publication.**

VIRGINIA - In the Clerk's Office of the  
Circuit Court of the County of Lee on  
the 7th day of January, 1903.

William Pennington, Plf.,  
versus  
Chas. E. Mallett, A. H.  
Ely, H. A. L. Maness, Chas.  
H. Maness, Rebecca Tyrn,  
Wm L. Eldridge, A. I.  
Witt, Amyra Thomas, B.  
N. Barnett, Simpson Thom-  
as, Joseph Delp, Nerry R. } In Chancery.  
Parsons, Samuel McLane,  
W. T. Bates, Trustee,  
John R. Gibson, James O.  
Gibson, Chas. B. Gibson,  
Olin C. Gibson and J. N.  
Kelly. } Defendants.

The object of this suit is to attach and  
subject to the payment of a debt of ten  
thousand and ninety three dollars and  
thirty six cents (\$10,093.36); with interest  
thereon from the 17th day of May, 1897,  
due by the said Chas. E. Mallett to said  
William Pennington, the following describ-  
ed real estate to-wit: All those contain-  
ing tracts or parcels of land, lying in Lee  
County, Virginia, in Rocky Station Magis-  
terial District, in the Pocket country,  
which were conveyed by John L. Penning-  
ton and Fannie E. Pennington, his wife, to  
the said Chas. E. Mallett by deed dated  
the 26th day of August, 1891, and record-  
ed in Lee County Deed Book No. 27, page  
217, to which deed reference is here made  
for a more particular description of the  
said lands by metes and bounds, the said  
tracts said to contain in the aggregate ele-  
ven hundred and sixty-five acres, more  
or less. And an affidavit having  
been made and filed that the defend-  
ant, Chas. E. Mallett is not a resident  
of the State of Virginia, it is ordered  
that he do appear here within fifteen  
days after due publication hereof, and  
do what may be necessary to protect  
his interest in this suit. And it is further  
ordered that a copy hereof be published  
once a week for four successive weeks in  
the Southwest Virginian, a weekly news-  
paper published at Jonesville, in Lee  
County, Virginia, and that a copy be posted  
at the front door of the court house of  
this county on the first day of the next  
term of the county court for said county.

A. B. MUNSEY, Clerk  
L. T. Hyatt and Geo. P. Cridlin, p. q. 1-2  
A copy-Tester:  
A. B. MUNSEY, Clerk



Order of Publication.

William Pennington

vs. } In Chancery.

Chas. E. Mallitt et als.

Filed March 2<sup>nd</sup> 1903

A. B. Muncey Clerk

Fee \$11<sup>40</sup>



The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon Chas. E. Mallett, A. H. Ely,  
H. A. L. Maness, Charles, H. Maness, Rebecca Tyra  
Wm. L. Eldridge, A. J. Witt Almira Thomas,  
B. N. Barnett, Simpson Thomas, Joseph Delp,  
Nervy, R. Parsons, Samuel L. McLane, W. T. Bales,  
trustee, John R. Gibson James, O. Gibson, Chas.  
B. Gibson, Olin, C. Gibson and J. N. Kelly

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules  
to be held for the said Court, on the 1<sup>st</sup> Monday in December 1903,  
to answer to a bill in chancery, exhibited against them in our said Court by  
William Pennington

And have then there this writ. Witness. A. B. MUNSEY, Clerk of our said Court, at  
the court-house, the 30<sup>th</sup> day of October 1902 and in the  
12<sup>7<sup>th</sup></sup> year of the Commonwealth.

A. B. Munsey Clerk



Levied on the following real estate of the defendant Charles E. Mallett, to-wit: All those certain tracts or parcels of land lying in Lee County, Virginia, in the Pocket country, which were conveyed by John L. Pennington and wife to said Charles E. Mallett by deed dated the 26th day of August, 1891, and recorded in Lee County Deed Book 27 page 217, to which deed reference is here made for a full and complete description of the said land, the said tracts containing in the aggregate about 1165 acres.

This the 30th day of October, 1902.

W. J. Mileham.

Sheriff.

Form No. 300

William Pennington

SUBPOENA  
IN  
CHANCERY.

vs.

Charles E. Mallett et al

Fitzatt & Lendrum p. q.

To/et December Rules

Lee Circuit Court.

clerk.

Given under my hand this the 30th day of October, 1902.

Virginia, Lee County, to-wit: .  
The necessary affidavit having been made and filed the officer  
to whom this writ is directed is hereby ordered to attach the real es-  
tate of Charles E. Mallett situated in this state.



Virginia, Lee County, to-wit:

I, A.B. Munsey, clerk of the circuit court for the county aforesaid, do swear that on the 30th day of October, 1902, Geo. P. Cridlin, Esq., attorney at law came to my said office and made a memorandum for a suit in chancery, in accordance with which I issued the subpoena, a copy of which is hereto attached; that I endorsed on said subpoena an order of attachment in the words appearing on the copy hereto attached; that I copied on the said subpoena a levy from a form furnished me by the said Cridlin in the words of the levy copied on the said subpoena hereto attached; and that on the same day the said W. J. Mileham, sheriff of Lee county signed the said levy in my presence; and as I verily believe the copy of the subpoena hereto attached is in every respect a true and exact copy of the said subpoena and order of attachment endorsed thereon, and of the levy of the sheriff thereon, issued by me and levied by the said sheriff on the said 30th day of October, 1902.

Given under my hand this the 9th day of July, 1903.

A. B. Munsey Clerk

Sworn to before me this 9th day of July, 1903, by A. B. Munsey.

A. M. Gaines,  
Clerk in Chy.



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ORE BARCKHME

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LEE CIRCUIT COURT.

Wm. Pennington. .)

Vs. (

Notice of application for transcript of  
record. )

C. E. Mallett et al. )

To R. <sup>L</sup> Pennington, Attorney For The Defendants In The Above  
Styled Cause:

You are hereby notified that I will, on the <sup>16</sup>th day  
of February, 1905, apply to the Clerk of the Circuit Court of Lee  
County for the transcript of so much of the record in the above  
styled suit as will enable the Supreme Court of Appeals of Virginia  
to whom I shall present <sup>a</sup> the petition for an appeal in this cause,  
to decide properly, on such petition, and to enable the Court,  
if the petition <sup>be</sup> ~~above~~ granted, properly to decide questions that  
may arise before it. That portion of the record which I shall  
have copied is as follows, to wit:-

- (1) The original bill.
- (2) The process, with attachment endorsed thereon and return  
thereof, which have been supplied in said cause, and  
affidavits filed therewith.
- (3) The order of publication in said cause.
- (4) Motion of defendants by counsel, to quash the attachment.
- (5) The demurrer of the defendants.
- (6) The order of the said Court, entered 14 day of July 1903
- (7) The bill of review of the plaintiff.
- (8) The order of the 21<sup>st</sup> day of May 1904
- (9) The final order or decree in said cause, entered 22<sup>nd</sup> day of  
September, 1904.

If you desire any other portions of said record to be  
transcribed, kindly notify the undersigned, or his counsel,



L. T. Hyatt, as soon as practicable.

Respectfully,

WM. PENNINGTON,

By Counsel.

R. T. Provie }  
L. T. Hyatt } Counsel.



Executed by deliv-  
ering a copy of  
within notice to  
R. L. Pennington  
on Feb 8th 1905  
I am Subdeputy  
for P. M. Ball, S.L.C.

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Filed Feb. 8th 1905  
H. J. Ewing,  
Clerk.



William Huntington

and Dr. Chauncey

Chas E. Mallett et al.

March 20, 1897

Expenses

|              |                |
|--------------|----------------|
| Clerk        | 9.99           |
| Printer      | 10.00          |
| Attorney     | 15.00          |
| Stationer    | 5.00           |
| <b>Total</b> | <b>\$39.99</b> |